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*Counsel for Highland Capital Management, L.P.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
Reorganized Debtor.	§	Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	21-03005-sgj
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
Defendants.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	21-03006-sgj
	§	

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

HIGHLAND CAPITAL MANAGEMENT	§	
SERVICES, INC., JAMES DONDERO, NANCY	§	
DONDERO, AND THE DUGABOY	§	
INVESTMENT TRUST,	§	
	§	
Defendants.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03007-sgj
	§	
HCRE PARTNERS, LLC (N/K/A NEXPOINT	§	
REAL ESTATE PARTNERS, LLC), JAMES	§	
DONDERO, NANCY DONDERO, AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

**HIGHLAND’S OBJECTION TO MOTION OF DEFENDANT NEXPOINT ADVISORS, L.P. TO EXTEND EXPERT DISCLOSURE AND DISCOVERY DEADLINES**

Highland Capital Management, L.P., the reorganized debtor (“Highland”) in the above-captioned chapter 11 case (the “Bankruptcy Case”) and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), hereby objects (the “Objection”) to the *Motion of NexPoint Advisors, L.P. to Extend Expert Disclosure and Discovery Deadlines* [AP **Docket No. 86**]<sup>2</sup> (the “Motion”) filed by defendant NexPoint Advisors, L.P. (“NexPoint”) and joined by certain defendants in other related adversary proceedings. Highland fully incorporates by reference its contemporaneously filed brief (the “Brief”)<sup>3</sup> in opposition to the Motions and would show unto the Court as follows:

<sup>2</sup> Unless specified otherwise, references to “AP Docket No. \_\_\_” are to the docket entries in NexPoint’s Adversary Proceeding, 21-03005.

<sup>3</sup> Capitalized terms used but not defined herein shall take on the meaning scribed thereto in the Brief.

**RELIEF REQUESTED**

1. By this Objection, Highland respectfully requests that the Court enter an order denying the Motions seeking to extend the expert disclosure and discovery deadlines set forth in the Scheduling Order.

2. Pursuant to Rules 7.1(d) and (h) of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the “Local Rules”), the Brief is being filed contemporaneously with this Objection and is incorporated by reference.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Highland respectfully requests that the Court enter an order (i) denying in whole the relief requested in the Motions, and (ii) granting Highland such further and additional relief as the Court deems just and proper.

Dated: December 1, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

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	§	Chapter 11
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	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03005-sgj
	§	
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	21-03006-sgj
	§	

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HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC., JAMES DONDERO, NANCY  
DONDERO, AND THE DUGABOY  
INVESTMENT TRUST,

Defendants.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HCRE PARTNERS, LLC (N/K/A NEXPOINT  
REAL ESTATE PARTNERS, LLC), JAMES  
DONDERO, NANCY DONDERO, AND THE  
DUGABOY INVESTMENT TRUST,

Defendants.

Adversary Proceeding No.

21-03007-sgj

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**HIGHLAND’S MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO  
MOTION OF DEFENDANT NEXPOINT ADVISORS, L.P. TO EXTEND EXPERT  
DISCLOSURE AND DISCOVERY DEADLINES**

Highland Capital Management, L.P., the reorganized debtor (“Highland”) in the above-captioned chapter 11 case (the “Bankruptcy Case”) and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), hereby objects (the “Objection”) to the *Motion of NexPoint Advisors, L.P. to Extend Expert Disclosure and Discovery Deadlines* [AP Docket No. 86]<sup>2</sup> (the “Motion”) filed by defendant NexPoint Advisors, L.P. (“NexPoint”) and joined by certain defendants in other related adversary proceedings.<sup>3</sup> In support of its Objection, Highland respectfully states as follows:

**I. PRELIMINARY STATEMENT**<sup>4</sup>

1. NexPoint’s Motion to modify the Scheduling Order is without merit and should be denied.

2. This Adversary Proceeding arises from NexPoint’s default under its Note in the original principal amount of \$30.7 million. The Note required NexPoint to make Annual Installment payments to Highland on December 31 of each year.

3. NexPoint blames Highland for its failure to timely make the Annual Installment payment. Initially, NexPoint contended that Highland breached its obligations by negligently failing to make the payment on NexPoint’s behalf. Then, Frank Waterhouse, an officer of NexPoint, a current employee of Skyview (the entity that services numerous of Mr. Dondero’s

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<sup>2</sup> Unless specified otherwise, references to “AP Docket No. \_\_\_” are to the docket entries in NexPoint’s Adversary Proceeding, 21-03005.

<sup>3</sup> See *Motion of Highland Capital Management Services, Inc. to Extend Expert Disclosure and Discovery Deadlines*, filed at Docket No. 91 in Adversary Proceeding 21-03006 (“HCMS’s Joinder”) (incorporating NexPoint’s Motion), and *Motion of HCRE Partners, LLC to Extend Expert Disclosure and Discovery Deadlines*, filed at Docket No. 86 in Adversary Proceeding 21-03007 (“HCRE’s Joinder”, and together with HCMS’s Joinder, the “Joinders,” and collectively with the Motion, the “Motions”) (incorporating NexPoint’s Motion).

<sup>4</sup> Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed thereto below.

businesses), and Highland's former Chief Financial Officer, testified in his deposition that NexPoint failed to make the Annual Installment payment because Mr. Dondero instructed him in December 2020 not to make *any* payments to Highland from *any* of the entities that Mr. Dondero controlled.

4. NexPoint contends that, in light of this testimony, an expert is necessary to testify regarding whether Highland violated an "affirmative duty or obligation" it owed to NexPoint under Section 6.01 of the Shared Services Agreement to effectuate the payment on behalf of NexPoint, despite Mr. Dondero's instructions to the contrary. According to NexPoint:

[T]he question becomes whether Waterhouse or the Debtor 'put their head in the sand' in violation of any affirmative duty or obligation they may have had regarding the matter, such as; to ask Dondero whether they correctly understood him; to ask Dondero whether he meant NexPoint or the Note; to inform Dondero of the potential consequences of a default by potentially accelerating a 30-year promissory note; or to try to dissuade him from his decision.

Motion ¶ 13.

5. NexPoint's Motion to extend the expert disclosure and discovery deadlines in order to retain a testifying expert on Highland's duties of care under the Shared Services Agreement is without merit.

6. NexPoint's suggested expert testimony is improper because it concerns "the standards and duties of care under the parties' Shared Services Agreement" and otherwise seeks to interpret that Agreement for the Court. It is black-letter law that the determination of the existence and scope of contractual and other legal duties are improper subjects of expert opinion because they constitute legal conclusions that fall within the exclusive province of the Court.

7. Even if that were not the case (and it is), NexPoint fails to satisfy its burden of demonstrating "good cause" to modify the Scheduling Order under Rule 16(b) for three independent reasons. *First*, as set forth below, the Motion is untimely. *Second*, the suggested expert testimony is irrelevant because it would not assist a factfinder in determining any technical

or complex issues in this case. By its plain terms, the Shared Services Agreement does not impose an affirmative duty on—or even authorize—Highland to effectuate payments on behalf of NexPoint without authorization from a NexPoint Representative. NexPoint’s reliance on Section 6.01 as the source of Highland’s alleged duties is thus misguided, as that provision applies only to duties specifically set forth under the Agreement.<sup>5</sup> **Finally**, allowance of the expert testimony at this late juncture would substantially prejudice Highland, with such prejudice being exacerbated (and not cured) by a continuance. If the Motion is granted, Highland will be forced to expend significant resources addressing NexPoint’s latest theories of its defense, including through additional discovery and motion practice. It will also cause a further delay of the trial on the merits, thereby impeding Highland’s ultimate recovery under the Note, all at the expense of Highland’s creditors.

8. Separately, as ill-conceived as the Motion is, the Joinders raise considerable questions of good faith, because neither Highland Management Services, Inc. (“HCMS”) nor HCRE Partners, LLC (“HCRE”) even alleges that it is a party to a shared services agreement (let alone the Shared Services Agreement submitted with the Motion), nor can it. The Motion seeks to “designate a testifying expert on the standards and duties of care under the parties’ Shared Services Agreement,” but the Joinders offer no explanation for why such expert testimony would have any relevance to them since they are not parties to **any** shared services agreement.

9. For the reasons set forth herein, Highland respectfully requests that the Court deny the Motion in all respects.

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<sup>5</sup> NexPoint offers no explanation for why Highland’s alleged obligations under the Shared Services Agreement supersede Mr. Waterhouse’s fiduciary duties to NexPoint. If anyone had a duty to ask Mr. Dondero “Are you sure?” or “Do you know what you’re doing” (an absurd concept on its own), it was surely Mr. Waterhouse—not in his capacity as a Highland employee—but in his capacity as an officer of, and a fiduciary to, NexPoint.



## II. STATEMENT OF FACTS

### A. The Note

10. On May 31, 2017, James Dondero (“Mr. Dondero”) signed a 30-year term note on behalf of NexPoint and in favor of Highland (the “Note”). Morris Dec.<sup>6</sup> Exhibit 1.

11. The Note consolidated NexPoint’s obligations under five Prior Notes (as that term is defined in the Note) and was for an original principal amount of \$30,746,812.33. *See* Morris Dec. Exhibit 1, Ex. A. Highland received no consideration for consolidating the five demand notes into a single 30-year term note.

12. NexPoint and Mr. Dondero knew that NexPoint was required to pay Highland in Annual Installments, because it was spelled out plainly in the Note:

2.1 Annual Payment Dates. During the term of this Note, [NexPoint] shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each payment) in thirty (30) equal annual payments (the “Annual Installments”) until the Note is paid in full. ***[NexPoint] shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note,*** commencing on the first such date to occur after the date of execution of this Note.

Morris Dec. Exhibit 1 § 2.1 (emphasis added).

13. NexPoint and Mr. Dondero also knew the consequences of failing to timely make the required Annual Installment payments, because they were also spelled out plainly in the Note:

4. Acceleration Upon Default. ***Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof [i.e., Highland],*** without notice, demand presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, ***mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable*** and subject to those remedies of the holder hereof [i.e., Highland].

*Id.* § 4 (emphases added).

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<sup>6</sup> References to “Morris Dec. \_\_\_” are to the *Declaration of John Morris in Support of Objection to Motion of Defendant NexPoint Advisors, L.P. to Extend Expert Disclosures and Discovery Deadlines* being filed concurrently herewith.

14. Finally, Mr. Dondero expressly agreed on behalf of NexPoint to waive any notice of default or acceleration:

5. Waiver. [NexPoint] hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices of any kind hereunder.

*Id.* § 5.

15. Thus, based on the plain terms of the Note executed by Mr. Dondero on NexPoint's behalf at a time when Mr. Dondero indisputably controlled both entities, NexPoint agreed (a) to make Annual Installment payments to Highland on December 31 of each year; (b) that Highland would have the unilateral right upon a default to accelerate all unpaid principal and interest due under the Note without notice or demand; and (c) to waive, among other things, a grace period, notice of nonpayment, notice of intent to accelerate, and "all other notices of any kind hereunder."

**B. NexPoint Defaults under the Note and Highland Sues to Collect**

16. NexPoint does not dispute that it failed to make the Annual Installment payment due under the Note on December 31, 2020 in the amount of \$1,406,111.92.

17. By letter dated January 7, 2021, in an exercise of its unambiguous and unconditional rights under the Note, Highland demanded that NexPoint immediately pay all unpaid principal and interest then due under the Note (the "Demand Letter"). Morris Dec. Exhibit 2. The Demand Letter stated:

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is \$24,471,804.98; however, interest continues to accrue under the Note.

The Note is in default, and payment is due immediately.

*Id.*

18. On January 22, 2021, after NexPoint failed to meet its obligations under the Note, Highland commenced this Adversary Proceeding. [AP Docket No. 1].

**C. NexPoint Blames Highland for Its Default**

19. On March 1, 2021, NexPoint filed its *Original Answer* asserting, among other things, that “[p]ursuant to that certain Shared Services Agreement, [Highland] was responsible for making payments on behalf of [NexPoint] under the note” such that any “alleged default” was caused by Highland’s own negligence and breach of contract (the “Original Defense”). *Defendant’s Original Answer* [AP Docket No. 6] (the “Original Answer”) ¶¶ 39-41.

20. On August 9, 2021, NexPoint filed its *First Amended Answer*, which did not substantively alter its Original Defense. [AP Docket No. 50] (the “Amended Answer”) ¶¶ 39-41.

21. On September 1, 2021, after Highland amended its Complaint, NexPoint filed its *Answer to Amended Complaint* [AP Docket No. 64] (the “Final Answer”). The Final Answer did not substantively alter NexPoint’s Original Defense. *See id.* ¶¶ 80-82.

22. Thus, at all times prior to filing the Motion, NexPoint contended that its failure to timely make the Annual Installment due on December 31, 2020 was caused by Highland’s own alleged negligence and breach of the Shared Services Agreement.

**D. The Court Enters the Scheduling Order**

23. On September 6, 2021, the Court entered the *Order Approving Stipulation and Agreed Order Governing Discovery and Other Pre-Trial Issues* [AP Docket No. 70] (the “Scheduling Order”).

24. The Scheduling Order provides, in pertinent part, that “expert designations and disclosures of all opinions, and the bases therefor, will be made by October 29, 2021, and experts will be deposed between October 29, 2021 and November 8, 2021.” Scheduling Order ¶ 3.

**E. Mr. Waterhouse Testifies that Mr. Dondero Instructed Him Not to Make Any Payments to Highland**

25. In December 2020, Frank Waterhouse (“Mr. Waterhouse”) wore multiple hats that Mr. Dondero gave to him, including: (a) Chief Financial Officer of Highland; (b) Treasurer of NexPoint; (c) Treasurer of HCMS; (d) Treasurer of Highland Capital Management Fund Advisors, L.P. (“HCMFA”, and together with NexPoint, the “Advisors”); and (e) Principal Executive Officer of certain funds managed by the Advisors. *See* Morris Dec. Exhibit 3 at 24:2-25; 35:8-22; 120:7-12; 327:3-8.

26. At a recent deposition, Mr. Waterhouse testified that NexPoint did not make the Annual Installment payment due on December 31, 2020 because Mr. Dondero had instructed him in December 2020 not to cause any payments to be made to Highland. Mr. Waterhouse also testified that he never followed up with Mr. Dondero or reminded him that the payment was coming due at the end of the month. *See* Morris Dec. Exhibit 3 at 390:4-392:17.

27. Mr. Dondero testified that he was unaware of anyone ever instructing or authorizing Highland to make the Annual Installment payment due under the Note on NexPoint’s behalf. Morris Dec. Exhibit 4 at 462:16-463:9. Mr. Waterhouse concurred and confirmed that Highland’s employees were not authorized to make the Annual Installment payment due at the end of the year without prior approval:

Q: Do you know if anybody ever instructed Highland’s employees to make the payment that was due by NexPoint at the end of the year?

A: Did anyone instruct Highland’s employees to make that payment?

Q: Correct.

A: Anyone – not that I’m aware.

Q: . . . [Were] any of Highland’s employees authorized to effectuate the payment on behalf of NexPoint that was due at the end of the year without getting approval from either you or Mr. Dondero?

A: They had the – they had the ability to make the payment, but they didn’t – you know, that – that payment needed to be approved.

Morris Dec. Exhibit 3 at 381:21-382:16.

**F. Highland’s Obligations under the Shared Services Agreement Were Limited to Those “Specifically” Identified Therein**

28. NexPoint and Highland entered into that certain *Amended and Restated Shared Services Agreement* effective as of January 1, 2018 (the “SSA”). Rukavina Dec., Exhibit A.<sup>7</sup>

29. Article II of the SSA required Highland to provide “assistance and advice” with respect to certain specified services. Highland is unaware of any provision in the SSA—and NexPoint cites to none—that authorized Highland to control NexPoint’s bank accounts or required Highland to effectuate payments on behalf of NexPoint without receiving instruction or direction from an authorized representative of NexPoint.

30. In fact, Article II of the SSA expressly provided that “for the avoidance of doubt . . . [Highland] shall ***not*** provide any advice to [NexPoint] or perform any duties on behalf of [NexPoint], other than the back- and middle office services contemplated herein, with respect to (a) the general management of [NexPoint], its business or activities . . . .” SSA at § 2.02 (emphasis added).

31. To emphasize the point further, the SSA expressly curtailed Highland’s authority to act on NexPoint’s behalf:

Section 2.06 Authority. [Highland’s] scope of assistance and advice hereunder is ***limited to the services specifically provided for in this Agreement. [Highland] shall not assume or be deemed to assume any rights or obligations of [NexPoint] under any other document or agreement to which NexPoint is a party. . . .*** [Highland] shall not have any duties or obligations to [NexPoint] unless those duties and obligations are specifically provided for in this Agreement (or in any amendment, modification or novation hereto or hereof to which [NexPoint] is a party.

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<sup>7</sup> References to “Rukavina Dec. \_\_\_” are to the *Declaration of Davor Rukavina* [AP **Docket No. 86-1**] attached to the Motion.

*Id.* § 2.06 (emphasis added).

32. There can be no credible dispute that (a) the Note is a “document or agreement to which NexPoint is a party,” and that (b) the making of the Annual Installment payments were “obligations of” NexPoint under the Note.

**G. The Instant Motion**

33. Apparently stunned by Mr. Waterhouse’s testimony, NexPoint now seeks to extend the expert disclosure and discovery deadlines set forth in the Scheduling Order so it can obtain expert testimony regarding Highland’s legal duties under Section 6.01 of the Shared Services Agreement. Specifically, NexPoint proposes to retain an expert to testify “on the standards and duties of care under the parties’ Shared Services Agreement . . . with respect to Highland’s role in NexPoint’s alleged failure to make a December 21, 2020 payment on the Note (defined below); specifically, that Highland was responsible for ensuring that NexPoint made this payment.” Motion ¶ 1.

**III. ARGUMENT**

**A. NexPoint’s Suggested “Expert Testimony” Is Improper as a Matter of Law**

34. NexPoint’s suggested expert testimony is improper as a matter of law because it amounts to a legal conclusion.

35. A party may not offer an expert opinion on the scope of a party’s “legal duty” because such testimony amounts to a legal conclusion. *See Panhandle Adver., LLC v. United Rentals Realty, LLC*, 2:19-CV-189-Z-BR, [2021 WL 1112901](#), at \*5 (N.D. Tex. Feb. 12, 2021); *Flax v. Quitman County Hosp., LLC*, 2:09-CV-101-M-D, [2011 WL 3585870](#), at \*5 (N.D. Miss. Aug. 16, 2011).

36. NexPoint’s suggested expert testimony relates to Highland’s “duties of care under the parties’ [SSA]” and, specifically, whether “Highland was responsible” under the SSA for

“ensuring that NexPoint made” its Annual Installment payment under its Note. Motion ¶¶ 1, 18. This is precisely the type of expert testimony that courts preclude because it constitutes a legal conclusion. *See Panhandle*, 2021 WL 1112901 at \*5 (granting plaintiff’s motion to exclude expert testimony “as to his opinions regarding the legal duties Defendant owed Plaintiff under the lease at issue” because “opinions on the duties owed by the defendants and whether they fulfilled those duties were legal conclusions and not the proper subject for expert testimony”); *Flax*, 2011 WL 3585870 at \*5 (prohibiting expert testimony “on the issue of *law* of whether a duty of care was owed”) (emphasis in original); *Hanspard v. Otis Elevator Co.*, CIV.A. 05-1292, 2007 WL 839994, at \*2 (W.D. La. Jan. 12, 2007) (granting plaintiff’s motion *in limine* to exclude expert testimony where “an opinion as to the scope of [party’s] contractual duties” constitutes a legal conclusion); *Taylor Pipeline Const., Inc. v. Directional Rd. Boring, Inc.*, 438 F. Supp. 2d 696, 706 (E.D. Tex. 2006) (finding expert testimony improper where it “opines as to the duties” owed by parties because “they amount to conclusions of law”).

37. The question of whether Highland owed or breached any legal duties is an issue for the trier of fact to decide. *See Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir. 1997) (affirming lower court’s preclusion of expert testimony regarding whether officers and directors “fulfilled their fiduciary duties to the Company ... is a legal opinion and inadmissible. Whether the officers and directors breached their fiduciary duties is an issue for the trier of fact to decide. It is not for [the expert] to tell the trier of fact what to decide”).

38. Accordingly, NexPoint’s suggested expert testimony on Highland’s duties under the SSA is improper as a matter of law, and the Motion should be denied on this basis alone.

**B. NexPoint Fails to Establish that Good Cause Exists to Modify the Scheduling Order**

39. NexPoint fails to satisfy its burden of demonstrating good cause to modify the Scheduling Order.

40. Under Rule 16(b) of the Federal Rules of Civil Procedure, a scheduling order may be modified only for “good cause.” FED. R. CIV. P. 16(b)(4). Courts consider four factors in determining whether “good cause” is shown: “(1) the explanation for the failure to identify the witness; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice.” *Geiserman v. MacDonald*, 893 F.2d 787, 791 (5th Cir.1990). These are the same four factors used to determine whether to exclude expert testimony under Rule 37(c)(1) of the Federal Rules of Civil Procedure. *See Grand Time Corp. v. Watch Factory, Inc.*, 3:08-CV-1770-K, 2009 WL 10678210, at \*2 (N.D. Tex. Nov. 18, 2009). Ultimately, “the good cause standard requires the ‘party seeking relief to show that the deadlines [could not] reasonably [have been] met despite the diligence of the party needing the extension.’” *Binh Hoa Le v. Exeter Fin. Corp.*, 3:15-CV-3839-L, 2019 WL 1436375, at \*14 (N.D. Tex. Mar. 31, 2019) (quoting *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 535 (5th Cir. 2003)).

41. “Under Rule 16(b), the movant has the burden of showing good cause to modify a scheduling order.” *Grand Time*, 2009 WL 10678210 at \*3. Whether to modify a scheduling order is within the court’s broad discretion. *See Geiserman*, 893 F.2d at 790 (“[O]ur court gives the trial court broad discretion to preserve the integrity and purpose of the pretrial order”) (internal quotations omitted); *Reliance Ins. Co. v. La. Land & Expl. Co.*, 110 F.3d 253, 257 (5th Cir. 1997). Moreover, “a trial court’s decision to exclude evidence as a means of enforcing a pretrial order must not be disturbed absent a clear abuse of discretion.” *Geiserman*, 893 F.2d at 790.

42. Each of the four factors weighs in favor of denying modification of the Scheduling Order.



**1. NexPoint's Explanation for Failing to Timely Designate an Expert Is Deficient**

43. NexPoint's explanation for its failure to timely designate an expert is disingenuous. NexPoint contends that, *inter alia*, its failure to previously designate an expert was "due solely to not having the benefit of Waterhouse's and Seery's recent deposition testimony," and that expert testimony is now "necessitated by Waterhouse's testimony and not any prior action or inaction of NexPoint Motion." Motion ¶ 21. NexPoint seeks to modify the Scheduling Order simply because the deposition of one of its witnesses did not go well. This is plainly improper under Rule 16(b). *See Reliance*, 110 F.3d at 257 (affirming lower court's denial of party's request to supplement expert report where "[movant] asked for an opportunity to avoid the deadline for its expert report merely because the deposition of its expert witness did not go well," noting that "[d]istrict judges have the power to control their dockets by refusing to give ineffective litigants a second chance to develop their case").

44. Moreover, NexPoint filed its Original Answer nine (9) months ago and its Original Defense was expressly based on the SSA. [AP Docket No. 6 ¶¶ 39-41]. Given the testimony of Mr. Dondero (which could not have been unexpected) and Mr. Waterhouse that NexPoint never authorized or instructed Highland to make the Annual Installment payment due on December 31, 2020, *see* Section II.E, *supra*, NexPoint has always had the burden of proving that Highland owed a duty under the SSA, yet it never offered expert opinions on the topic. If NexPoint wanted to offer "expert testimony" concerning Highland's duties under the SSA, it had nine months to do so, and Mr. Waterhouse's testimony, expected or not, does nothing to change that. *See Geiserman*, 893 F.2d at 792 (finding party failed to provide a "valid reason that would justify excusing him from the deadlines imposed by the lower court," noting "[t]he claimed importance of expert testimony underscores the need for [party] to have timely designated his expert witness," and "[t]he importance of such proposed testimony cannot singularly override the enforcement of local rules

and scheduling orders”). NexPoint’s conclusory statements regarding the need for expert testimony are insufficient under Rule 16(b). *See Binh Hoa*, 2019 WL 1436375 at \*20 (finding “vague and conclusory statements regarding the need for additional information or facts do not adequately explain [party’s] failure to meet the expert deadline in the Scheduling Order”).

45. Accordingly, the first factor strongly favors denial of the Motion.

**2. NexPoint’s Suggested “Expert” Testimony Is Irrelevant**

46. The second factor—the importance of the suggested expert testimony— weighs heavily in favor of denying modification of the Scheduling Order.

47. In addition to being improper, the suggested expert testimony is also irrelevant. To be relevant, “expert testimony [must] ‘assist the trier of fact to understand the evidence or to determine a fact in issue.’” *Charalambopoulos v. Grammer*, 3:14-CV-2424-D, 2017 WL 930819, at \*9 (N.D. Tex. Mar. 8, 2017) (quoting *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 245 (5th Cir. 2002)).

48. NexPoint contends that its suggested expert testimony is “important because the duties of care as specified in the [SSA] are terms of art necessitating an expert analysis.” Motion ¶ 21. NexPoint’s reliance on Section 6.01 in support of its Motion is misplaced.

49. By its express terms, Section 6.01 does not impose a duty on Highland to make or effectuate Annual Installment payments on NexPoint’s behalf without authorization from a representative of NexPoint. Rather, Section 6.01 sets forth a “standard of care” that applies *only* with respect to the discharge of “duties under this Agreement.”<sup>8</sup> In fact, to remove all doubt, the

---

<sup>8</sup> Notably, and notwithstanding the “standard of care” set forth in Section 6.01, the SSA provides Highland with considerable exculpation and indemnification protections that alone defeat NexPoint’s Original Defense. For example, NexPoint agreed not to hold Highland liable for any acts or omissions unless it is determined by a court of competent jurisdiction to “be the result of gross negligence or to constitute fraud or willful misconduct.” Rukavina Dec., Exhibit A § 6.02. NexPoint also agreed to indemnify Highland “from and against any and all claims and causes of action” for, among other things, “negligence.” *Id.* § 6.03.

SSA emphasizes multiple times that Highland had **no** duties or obligations except with respect to those “specifically” identified therein. *See* Rukavina Dec., Exhibit A §§ 2.02, 2.06. NexPoint does not and cannot identify any provision in the SSA that imposes a duty on Highland to make Annual Installment payments on NexPoint’s behalf without direction from an authorized NexPoint representative. *See* Original Answer ¶¶ 39-41 (no SSA provision cited); Amended Answer ¶¶ 39-41 (no SSA provision cited); Final Answer ¶¶ 80-82 (no SSA provision cited); Motion, generally (citing only to Section 6.01).

50. Thus, based on the plain terms of the SSA and NexPoint’s own pleadings, expert testimony regarding Highland’s alleged “duties” is irrelevant. *See Geiserman*, 893 F.2d at 791 (affirming lower court’s refusal to modify scheduling order, noting that expert testimony “is not critical” if the issue at hand is “obvious to a layperson or established as a matter of law”); *Rolls-Royce Corp. v. Heros, Inc.*, CIV.A. 307-CV-0739-D, 2010 WL 184313, at \*6 (N.D. Tex. Jan. 14, 2010) (“Testimony is irrelevant [] when an expert offers a conclusion based on assumptions unsupported by the facts of the case”).

51. Moreover, the suggested expert testimony will not help the factfinder understand a complex fact in issue. Contrary to NexPoint’s representations, this Adversary Proceeding does not involve complicated or technical issues. The issues in this Adversary proceeding are whether NexPoint defaulted on its Note and whether NexPoint can prove that Highland’s alleged “negligence” or “breach of contract” caused such default. Final Answer ¶¶ 80-82. These issues are well within a fact-finder’s understanding and are not the type which would necessitate an expert. *See Nola Ventures, LLC v. Upshaw Ins. Agency, Inc.*, CV 12-1026, 2014 WL 12721924, at \*10 (E.D. La. Nov. 7, 2014), *on reconsideration*, CIV.A. 12-1026, 2014 WL 6090584 (E.D. La. Nov. 13, 2014) (excluding expert testimony where, “[d]espite Plaintiffs’ arguments to the contrary, this case is not about the complicated inner workings of the insurance industry. It is about whether

an insurance agent misrepresented the type of coverage that Plaintiffs believed they were purchasing, and whether Defendants owed a heightened duty of care to Plaintiffs. Nothing in [expert's] report or proposed testimony will help the jury to understand a fact in issue that is not within the common understanding of a lay juror"); *Henderson v. Atmos Energy*, 496 F. Supp. 3d 1011, 1017 (E.D. La. 2020) (excluding expert testimony as irrelevant and unnecessary where "it is one based in common sense").

52. At all relevant times, Mr. Waterhouse was an officer and a fiduciary of NexPoint, serving as its Treasurer. If anyone had an obligation to ask Mr. Dondero if he wanted to reconsider his instructions, it was Mr. Waterhouse in the first instance—not in his capacity as an employee of Highland, but as an officer and fiduciary of the obligor, NexPoint. Whether Mr. Dondero or Mr. Waterhouse is telling the truth is an interesting issue, but the Court need not resolve their dispute because it would only be relevant if the SSA imposed a duty on Highland to effectuate the Annual Installment payment without ever receiving any direction or instruction from a duly authorized representative of NexPoint. And, as Mr. Waterhouse testified, the SSA imposes no such duty.

53. Accordingly, the suggested expert testimony is irrelevant, and the Motion should be denied on this basis.

**3. Allowing the Testimony Would Prejudice Highland**

54. The third and fourth factors also weigh in favor of denying the Motion.

55. Allowing the suggested expert testimony would prejudice Highland because Highland would need to expend additional resources responding to NexPoint's latest theory of its defense by way of: (i) retaining a rebuttal expert; (ii) deposing NexPoint's expert; or (iii) moving to strike the expert testimony. *See Geiserman*, 893 F.2d at 791 (affirming lower court's striking of untimely witness designation and preclusion of expert testimony where delay of "a couple

weeks in designating the expert witness” would have “disrupted the court’s discovery scheduling and the opponent’s preparation,” and resulted in “expense that would result from an extended discovery schedule for [movant’s] failure to adhere to deadlines,” noting that “the trial court has latitude to control discovery abuses and cure prejudice by excluding improperly designated evidence”); *Binh Hoa*, 2019 WL 1436375 at \*20 (“It would [] be patently unfair to allow Plaintiff to supplement and amend his expert report this late in the case without: (1) allowing Defendants to amend their expert designations and provide an expert report to address the matters in Plaintiff’s amended and supplemental expert reports, (2) giving Defendants an opportunity to depose Plaintiff’s expert regarding his most recent opinion . . .”).

56. A continuance would not cure this prejudice because the trial on the merits of the underlying action would be unnecessarily delayed. This would ultimately delay Highland’s potential recovery under the Note and distributions to creditors under Highland’s Plan. *See S&W Enters.*, 315 F.3d at 537 (affirming lower court’s denial of untimely submission of expert report where defendant would be forced to conduct additional discovery in response to movant’s new materials, noting that “while a continuance could be granted for additional discovery . . . a continuance would unnecessarily delay the trial”); *Reliance*, 110 F.3d at 257-58 (affirming lower court’s denial to modify scheduling order to add expert testimony where court found “[t]o allow plaintiff to add more material now and create essentially a new report would prejudice the defendants, who would then have to get an expert to address these last-minute conclusions, and thus disrupt the trial date in this case”) (internal quotations omitted); *Geiserman*, 893 F.2d at 791 (finding that while attorney “could have conducted new discovery and redeposed witnesses under a continuance in response to the untimely designation, this would have resulted in additional delay and increased the expense of defending the lawsuit”); *Binh Hoa*, 2019 WL 1436375 at \*20 (“Ordering another continuance would only serve to reward Plaintiff for his dilatory conduct and

failure to comply with court-ordered deadlines and this district's Local Civil Rules and result in additional delay and expense. Regardless, it is not incumbent on the court to award litigants for failing to develop their cases”). A simple collection action like the Adversary Proceeding should not be continually extended simply because the defendant is unsatisfied with its defenses and the evidence adduced in discovery.

57. For these additional reasons, NexPoint fails to demonstrate good cause to excuse it from the deadlines set forth in the Scheduling Order. Accordingly, the Motion should be denied.

**C. HCRE’s and HCMS’s Joinders Have Even Less Merit than the Motion and Should Be Denied**

58. The Joinders are even more frivolous than the Motion. In addition to the reasons set forth above, neither HCMS nor HCRE was ever a party to any shared services agreement with Highland, let alone the SSA that is the foundation of the Motion. Accordingly, the Joinders are without merit and should be summarily denied by the Court.

**CONCLUSION**

For the foregoing reasons, Highland respectfully requests that the Court (i) deny the Motions and (ii) grant such other and further relief as the Court deems just and proper.

Dated: December 1, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 2405397)  
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-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

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*Counsel for Highland Capital Management, L.P.*





HIGHLAND CAPITAL MANAGEMENT, L.P., §

HCRE PARTNERS, LLC (N/K/A NEXPOINT	\$
REAL ESTATE PARTNERS, LLC), JAMES	\$
DONDERO, NANCY DONDERO, AND THE	\$
DUGABOY INVESTMENT TRUST,	\$

3. Attached as **Exhibit 2** is a true and correct copy of a Demand Letter dated January 7, 2021.
4. Attached as **Exhibit 3** is a true and correct copy of the October 19, 2021 deposition transcript of Frank Waterhouse.
5. Attached as **Exhibit 4** is a true and correct copy of the October 29, 2021 deposition transcript of James Dondero.

Dated: December 1, 2021.

/s/ John A. Morris  
John A. Morris

# EXHIBIT 1

## PROMISSORY NOTE

**\$30,746,812.33**

**May 31, 2017**

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from NexPoint Advisors, L.P., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS (\$30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

**MAKER:**

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By: 

Name:

Title:

**EXHIBIT A**

**PRIOR NOTES**

<b>Loan Date</b>	<b>Initial Note Amount</b>	<b>Interest Rate</b>	<b>Principal and Interest Outstanding as of May 31, 2017</b>
8/21/14	\$4,000,000	6.00%	\$4,616,739.73
10/1/14	\$6,000,000	6.00%	\$6,959,671.23
11/14/14	\$2,500,000	6.00%	\$2,881,780.82
1/29/15	\$3,100,000	6.00%	\$3,534,679.45
7/22/15	\$12,075,000	6.00%	\$12,753,941.10
	<b>\$27,675,000</b>		<b>\$30,746,812.33</b>



## **EXHIBIT 2**

January 7, 2021

NexPoint Advisors, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James Dondero

Re: Demand on Promissory Note

Dear Mr. Dondero,

On May 31, 2017, NexPoint Advisors, L.P, entered into that certain promissory note in the original principal amount of \$30,746,812.33 (the “Note”) in favor of Highland Capital Management, L.P. (“Payee”).

As set forth in Section 2 of the Note, accrued interest and principal on the Note is due and payable in thirty equal annual payments with each payment due on December 31 of each calendar year. Maker failed to make the payment due on December 31, 2020.

Because of Maker’s failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is \$24,471,804.98; however, interest continues to accrue under the Note.

**The Note is in default, and payment is due immediately.** Payments on the Note must be made in immediately available funds. Payee’s wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Note or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Note will continue to accrue until the Note is paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.  
Highland Capital Management, L.P.  
Chief Executive Officer/Chief Restructuring Officer



cc: Fred Caruso  
James Romey  
Jeffrey Pomerantz  
Ira Kharasch  
Gregory Demo  
DC Sauter

## **Appendix A**

ABA #: 322070381  
Bank Name: East West Bank  
Account Name: Highland Capital Management, LP  
Account #: 5500014686

## **EXHIBIT 3**

1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 -----  
6 IN RE:

7 Chapter 11  
8 HIGHLAND CAPITAL  
9 MANAGEMENT, L.P., CASE NO.  
10 19-34054-SGI11

11 Debtor.

12 -----  
13 HIGHLAND CAPITAL MANAGEMENT, L.P.,

14 Plaintiff,

15 vs.

16 Adversary  
17 Proceeding No.

18 HIGHLAND CAPITAL MANAGEMENT 21-03000-SGI  
19 FUND ADVISORS, L.P.; NEXPOINT  
20 ADVISORS, L.P.; HIGHLAND  
21 INCOME FUND; NEXPOINT  
22 STRATEGIC OPPORTUNITIES FUND;  
23 NEXPOINT CAPITAL, INC.; and  
24 CLO HOLDCO, LTD.,

25 Defendants.  
-----

REMOTE VIDEOTAPED DEPOSITION OF

FRANK WATERHOUSE

October 19, 2021

Reported by: Susan S. Klinger, RMR-CRR, CSR

Job No: 201195

<p>Page 2</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2</p> <p>3</p> <p>4 October 19, 2021</p> <p>5 9:30 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Remote Deposition of FRANK WATERHOUSE,</p> <p>10 held before Susan S. Klinger, a Registered</p> <p>11 Merit Reporter and Certified Realtime Reporter</p> <p>12 of the State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A P P E A R A N C E S:</p> <p>3 (All appearances via Zoom.)</p> <p>4 Attorneys for the Reorganized Highland Capital</p> <p>5 Management:</p> <p>6 John Morris, Esq.</p> <p>7 Hayley Winograd, Esq.</p> <p>8 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>9 780 Third Avenue</p> <p>10 New York, New York 10017</p> <p>11 Attorneys for the Witness:</p> <p>12 Debra Dandeneau, Esq.</p> <p>13 Michelle Hartmann, Esq.</p> <p>14 BAKER MCKENZIE</p> <p>15 1900 North Pearl Street</p> <p>16 Dallas, Texas 75201</p> <p>17 Attorneys for NexPoint Advisors, LP and</p> <p>18 Highland Capital Management Fund Advisors,</p> <p>19 L.P.:</p> <p>20 Davor Rukavina, Esq.</p> <p>21 An Nguyen, Esq.</p> <p>22 MUNSCH HARDT KOPF &amp; HARDD</p> <p>23 500 North Akard Street</p> <p>24 Dallas, Texas 75201-6659</p> <p>25</p>
<p>Page 4</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Attorneys for Jim Dondero, Nancy Dondero, HCRA,</p> <p>3 and HCMS:</p> <p>4 Deborah Deitsch-Perez, Esq.</p> <p>5 Michael Aigen, Esq.</p> <p>6 STINSON</p> <p>7 3102 Oak Lawn Avenue</p> <p>8 Dallas, Texas 75219</p> <p>9</p> <p>10 Attorneys for Dugaboy Investment Trust:</p> <p>11 Warren Horn, Esq.</p> <p>12 HELLER, DRAPER &amp; HORN</p> <p>13 650 Poydras Street</p> <p>14 New Orleans, Louisiana 70130</p> <p>15</p> <p>16 Attorneys for Marc Kirschner as the trustee for</p> <p>17 the litigation SunTrust:</p> <p>18 Deborah Newman, Esq.</p> <p>19 QUINN EMANUEL URQUHART &amp; SULLIVAN</p> <p>20 51 Madison Avenue</p> <p>21 New York, New York 10010</p> <p>22</p> <p>23 Also Present:</p> <p>24 Ms. La Asia Canty</p> <p>25</p>	<p>Page 5</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I N D E X</p> <p>3</p> <p>4 WITNESS PAGE</p> <p>5 FRANK WATERHOUSE</p> <p>6 EXAMINATION BY MR. MORRIS 10</p> <p>7 EXAMINATION BY MR. RUKAVINA 256</p> <p>8 EXAMINATION BY MS. DEITSCH-PEREZ 352</p> <p>9 EXAMINATION BY MR. MORRIS 377</p> <p>10 EXAMINATION BY MR. RUKAVINA 387</p> <p>11 EXAMINATION BY MS. DEITSCH-PEREZ 393</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14 No. Page</p> <p>15 Exhibit 2 NPA et al Amended Complaint 142</p> <p>16 Exhibit 33 6/3/19 Management 91</p> <p>17 Representation</p> <p>18 Exhibit 34 HCMLP Consolidated Financial 94</p> <p>19 Statements</p> <p>20 Exhibit 35 HCMFA Incumbency Certificate 151</p> <p>21 Exhibit 36 Email string re 15(c) 170</p> <p>22 Exhibit 39 HCMLP Operating Results 2/18 226</p> <p>23 Exhibit 40 Summary of Assets and 236</p> <p>24 Liabilities</p> <p>25 Exhibit 41 12/19 Monthly Operating Report 258</p>

<p style="text-align: right;">Page 6</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Exhibit 45 HCMFA Consolidated Financial 135</p> <p>3 Statements</p> <p>4 Exhibit 46 NexPoint 2019 Audited 218</p> <p>5 Financials</p> <p>6</p> <p>7 Exhibit A1 Emails 11/25 328</p> <p>8 Exhibit A2 Emails 12/31 338</p> <p>9 Exhibit A6 Emails 1/12 341</p> <p>10 Exhibit A7 Promissory Notes 297</p> <p>11 Exhibit A9 Email, 8/31 307</p> <p>12 Exhibit A10 Acknowledgment from HCMLP 302</p> <p>13 Exhibit A11 HCMLP Schedule 71A 309</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 PROCEEDINGS</p> <p>3 VIDEOGRAPHER: Good morning,</p> <p>4 Counselors. My name is Scott Hatch. I'm a</p> <p>5 certified legal videographer in association</p> <p>6 with TSG Reporting, Inc.</p> <p>7 Due to the severity of COVID-19 and</p> <p>8 following the practice of social</p> <p>9 distancing, I will not be in the same room</p> <p>10 with the witness. Instead, I will record</p> <p>11 this videotaped deposition remotely. The</p> <p>12 reporter, Susan Klinger, also will not be</p> <p>13 in the same room and will swear the witness</p> <p>14 remotely.</p> <p>15 Do all parties stipulate to the</p> <p>16 validity of this video recording and remote</p> <p>17 swearing, and that it will be admissible in</p> <p>18 the courtroom as if it had been taken</p> <p>19 following Rule 30 of the Federal Rules of</p> <p>20 Civil Procedures and the state's rules</p> <p>21 where this case is pending?</p> <p>22 MR. HORN: Yes.</p> <p>23 MS. DANDENEAU: Yes.</p> <p>24 MR. MORRIS: Yes. John Morris. I</p> <p>25 would just try to do a negative notice</p>
<p style="text-align: right;">Page 8</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 here, as we did yesterday. If anybody has</p> <p>3 a problem with what was just stated, can</p> <p>4 you state your objection now?</p> <p>5 Okay. No response, so everybody</p> <p>6 accepts the stipulation and the instruction</p> <p>7 that was just given.</p> <p>8 VIDEOGRAPHER: Thank you. This is</p> <p>9 the start of media labeled Number 1 of the</p> <p>10 video recorded deposition of Frank</p> <p>11 Waterhouse In Re: Highland Capital</p> <p>12 Management, L.P., in the United States</p> <p>13 Bankruptcy Court for the Northern District</p> <p>14 of Texas, Dallas Division, Case Number</p> <p>15 21-03000-SGI.</p> <p>16 This deposition is being held via</p> <p>17 video conference with participants</p> <p>18 appearing remotely due to COVID-19</p> <p>19 restrictions on Tuesday, October 19th, 2021</p> <p>20 at approximately 9:32 a.m. My name is</p> <p>21 Scott Hatch, legal video specialist with</p> <p>22 TSG Reporting, Inc. headquartered at 228</p> <p>23 East 45th Street, New York, New York. The</p> <p>24 court reporter is Susan Klinger in</p> <p>25 association with TSG Reporting.</p>	<p style="text-align: right;">Page 9</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Counsel, please introduce</p> <p>3 yourselves.</p> <p>4 MR. MORRIS: John Morris, Pachulski</p> <p>5 Stang Ziehl &amp; Jones for the reorganized</p> <p>6 Highland Capital Management, L.P., the</p> <p>7 plaintiff in these actions.</p> <p>8 MS. DANDENEAU: Deborah Dandeneau</p> <p>9 from Baker McKenzie. My partner, Michelle</p> <p>10 Hartmann, is also in the room with me,</p> <p>11 representing Frank Waterhouse individually.</p> <p>12 MS. DEITSCH-PEREZ: Deborah</p> <p>13 Deitsch-Perez from Stinson, LLP,</p> <p>14 representing Jim Dondero, Nancy Dondero,</p> <p>15 HCRA, and HCMS.</p> <p>16 MR. HORN: Warren Horn with Heller,</p> <p>17 Draper &amp; Horn in New Orleans representing</p> <p>18 Dugaboy Investment Trust.</p> <p>19 MR. RUKAVINA: Davor Rukavina with</p> <p>20 Munsch Hardt Kopf &amp; Harr in Dallas</p> <p>21 representing NexPoint Advisors, LP and</p> <p>22 Highland Capital Management Fund Advisors,</p> <p>23 L.P.</p> <p>24 MR. AIGEN: Michael Aigen from</p> <p>25 Stinson, and I represent the same parties</p>

<p style="text-align: right;">Page 10</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as Deborah Deitsch-Perez.</p> <p>3 MS. NEWMAN: This is Deborah Newman</p> <p>4 from Quinn Emanuel. We represent the</p> <p>5 litigation -- Marc Kirschner as the trustee</p> <p>6 for the litigation SunTrust.</p> <p>7 MR. MORRIS: I think that is</p> <p>8 everybody.</p> <p>9 VIDEOGRAPHER: Thank you. Will the</p> <p>10 court reporter please swear in the witness.</p> <p>11 FRANK WATERHOUSE,</p> <p>12 having been first duly sworn, testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Please state your name for the</p> <p>17 record.</p> <p>18 A. My name is Frank Waterhouse.</p> <p>19 Q. Good morning, Mr. Waterhouse. I'm</p> <p>20 John Morris, as you know, from Pachulski Stang</p> <p>21 Ziehl &amp; Jones. You understand that my firm and</p> <p>22 I represent Highland Capital Management, L.P.;</p> <p>23 is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you understand that</p>	<p style="text-align: right;">Page 11</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we're here today for your deposition in your</p> <p>3 individual capacity?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review and -- did you</p> <p>6 receive and review a subpoena that Highland</p> <p>7 Capital Management, L.P., served upon you?</p> <p>8 A. Yes.</p> <p>9 Q. You have been deposed before; right?</p> <p>10 A. Yes.</p> <p>11 Q. How many times have you been</p> <p>12 deposed?</p> <p>13 A. About three or four times.</p> <p>14 Q. Okay. And I defended you in one</p> <p>15 deposition; isn't that right?</p> <p>16 A. That is correct.</p> <p>17 Q. So the general ground rules for this</p> <p>18 deposition are largely the same as the</p> <p>19 depositions you have given before. And that is</p> <p>20 I will ask you a series of questions, and it is</p> <p>21 important that you allow me to finish my</p> <p>22 question before you begin your answer; is that</p> <p>23 fair?</p> <p>24 A. Yes.</p> <p>25 Q. And it is important that I allow you</p>
<p style="text-align: right;">Page 12</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to finish your answers before I begin a</p> <p>3 question, but if I fail to do that, will you</p> <p>4 let me know?</p> <p>5 A. I can certainly do that.</p> <p>6 Q. Okay. Do you understand that this</p> <p>7 deposition is being videotaped?</p> <p>8 A. Yes.</p> <p>9 Q. You understand that I may seek to</p> <p>10 use portions of the videotape in a court of</p> <p>11 law?</p> <p>12 A. I did not know that, until you just</p> <p>13 said that.</p> <p>14 Q. Okay. And you are aware of that now</p> <p>15 before the deposition begins substantively; is</p> <p>16 that right?</p> <p>17 A. Yes.</p> <p>18 Q. So unlike I think the other</p> <p>19 depositions that you have given, this one is</p> <p>20 being given remotely. So that presents some</p> <p>21 unique challenges, at least as compared to a</p> <p>22 deposition that is taken in-person.</p> <p>23 From time to time we're going to put</p> <p>24 documents up on the screen, Mr. Waterhouse.</p> <p>25 And it is important that I give you the</p>	<p style="text-align: right;">Page 13</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 opportunity to review any portion of the</p> <p>3 document that you think you need in order to</p> <p>4 fully and completely answer the question.</p> <p>5 So I would ask you to let me know if</p> <p>6 there is a portion of a document that you need</p> <p>7 to see in order to fully and completely answer</p> <p>8 the question. Can you do that for me?</p> <p>9 A. Yes.</p> <p>10 MS. DANDENEAU: Mr. Morris, I would</p> <p>11 just note that we do have hard copies of</p> <p>12 the documents that you sent, so if you can</p> <p>13 just refer to the exhibit number as</p> <p>14 reflected in the documents that you sent,</p> <p>15 Mr. Waterhouse will be able to look at the</p> <p>16 hard copies of those documents.</p> <p>17 MR. MORRIS: I appreciate that,</p> <p>18 and -- and I will encourage him to do so.</p> <p>19 There will be other documents that we did</p> <p>20 not send to you that we'll be using today</p> <p>21 though.</p> <p>22 Q. Okay. With that as background, if</p> <p>23 there is anything that I ask you, sir, that you</p> <p>24 don't understand, will you let me know?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 14</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are you currently employed?</p> <p>3 A. Yes.</p> <p>4 Q. By whom?</p> <p>5 A. The Skyview Group.</p> <p>6 Q. When did you become employed by the</p> <p>7 Skyview Group?</p> <p>8 A. I believe March 1st of 2021.</p> <p>9 Q. Do you have a title at Skyview?</p> <p>10 A. Yes.</p> <p>11 Q. What is your title?</p> <p>12 A. My title is chief financial officer.</p> <p>13 Q. Do you report to anybody in your</p> <p>14 role as CFO?</p> <p>15 A. I don't, no.</p> <p>16 Q. No. Is there a president or a CEO</p> <p>17 of Skyview?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that?</p> <p>20 A. That is Scott Ellington.</p> <p>21 Q. But you don't report to</p> <p>22 Mr. Ellington; is that right?</p> <p>23 A. I don't think so.</p> <p>24 Q. Does Skyview Group --</p> <p>25 MS. DANDENEAU: Excuse me, we --</p>	<p style="text-align: right;">Page 15</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I -- I -- I might. I just -- I</p> <p>3 don't recall.</p> <p>4 Q. Okay. Does Skyview Group provide</p> <p>5 any services to any entity directly or</p> <p>6 indirectly owned or controlled by Jim Dondero?</p> <p>7 A. Yes.</p> <p>8 Q. Can you name -- is that pursuant to</p> <p>9 written contracts?</p> <p>10 A. Yes.</p> <p>11 Q. And do you know how many contracts</p> <p>12 exist?</p> <p>13 A. Approximately six or so.</p> <p>14 Q. And is the Skyview Group made up of</p> <p>15 individuals who were formerly employees of</p> <p>16 Highland Capital Management, L.P.?</p> <p>17 A. No.</p> <p>18 Q. Do you know how many -- how many --</p> <p>19 how many employees does Skyview have?</p> <p>20 A. Approximately 35.</p> <p>21 Q. And can you tell me how many of</p> <p>22 those 35 are former officers, directors, or</p> <p>23 employees of Highland Capital Management, L.P.?</p> <p>24 A. I don't know the exact number.</p> <p>25 Q. Is it more than 20?</p>
<p style="text-align: right;">Page 16</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Is it more than 30?</p> <p>4 A. I don't know.</p> <p>5 Q. Can you tell me what portion of</p> <p>6 Skyview -- Skyview's revenue is derived from</p> <p>7 entities that are directly or indirectly owned</p> <p>8 or controlled by Jim Dondero?</p> <p>9 MS. DANDENEAU: Mr. Morris, I mean,</p> <p>10 you called Mr. Waterhouse here individually</p> <p>11 for purposes of his testimony in connection</p> <p>12 with the noticed litigation. I have given</p> <p>13 you some leeway to ask him some background</p> <p>14 information about Skyview Group, but this</p> <p>15 is not a substitute for a deposition in</p> <p>16 connection with any other pending disputes</p> <p>17 that exist. And -- and we agreed to accept</p> <p>18 the subpoena on the basis of he -- this is</p> <p>19 testimony that he is giving in connection</p> <p>20 with the noticed litigation.</p> <p>21 I really think that you are now</p> <p>22 going a little bit far afield from the</p> <p>23 purpose of this deposition.</p> <p>24 MR. MORRIS: Okay. It is -- I'm not</p> <p>25 intending to use these -- the answers to</p>	<p style="text-align: right;">Page 17</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 these questions for any purpose other than</p> <p>3 this litigation. I think you understand</p> <p>4 fully why I'm asking the questions, and I</p> <p>5 just have a couple more, if you will bear</p> <p>6 with me.</p> <p>7 MS. DANDENEAU: Okay.</p> <p>8 MS. DEITSCH-PEREZ: Can we have an</p> <p>9 agreement that an objection by one is an</p> <p>10 objection for any other party here?</p> <p>11 MR. MORRIS: Sure. I would -- I</p> <p>12 would encourage that, sure.</p> <p>13 MS. DEITSCH-PEREZ: Thank you.</p> <p>14 MR. MORRIS: It can't be sustained</p> <p>15 or overruled more than one time, so...</p> <p>16 Q. Mr. Waterhouse, can you answer my</p> <p>17 question, please.</p> <p>18 MS. DANDENEAU: Do you want to</p> <p>19 repeat it, Mr. Morris, for his benefit?</p> <p>20 MR. MORRIS: Sure.</p> <p>21 Q. Can you -- can you tell me the</p> <p>22 approximate portion of Skyview's revenue that</p> <p>23 is derived from entities that are directly or</p> <p>24 indirectly owned or controlled by Mr. Dondero?</p> <p>25 A. I don't know the exact number.</p>



<p style="text-align: right;">Page 18</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it more than 75 percent?</p> <p>3 A. Yes.</p> <p>4 Q. Is it more than 90 percent?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Can I refer to Highland</p> <p>7 Capital Management, L.P., as Highland?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And you previously</p> <p>10 served as Highland's CFO; correct?</p> <p>11 A. Yes.</p> <p>12 Q. When did you join Highland?</p> <p>13 A. I don't recall the exact date.</p> <p>14 Q. Can you tell me what year?</p> <p>15 A. 2006.</p> <p>16 Q. When did you -- in what year did you</p> <p>17 become Highland's CFO?</p> <p>18 A. I don't recall the exact date.</p> <p>19 Q. I'm not asking you for the exact</p> <p>20 date. I'm asking you if you recall the year in</p> <p>21 which you were appointed CFO.</p> <p>22 A. I don't recall the exact year.</p> <p>23 Q. Can you tell me which years it is</p> <p>24 possible that you were appointed to CFO of</p> <p>25 Highland?</p>	<p style="text-align: right;">Page 19</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2011 or 2012.</p> <p>3 Q. Did you serve as Highland's CFO on a</p> <p>4 continuous basis from in or around 2011 or 2012</p> <p>5 until early 2021?</p> <p>6 A. Yes.</p> <p>7 Q. During that entire time you reported</p> <p>8 directly to Jim Dondero; correct?</p> <p>9 A. I -- I don't know.</p> <p>10 Q. Is there anybody else you reported</p> <p>11 to -- withdrawn.</p> <p>12 Did you report to Mr. Dondero for</p> <p>13 some portion of the time that you served as</p> <p>14 CFO?</p> <p>15 A. Yes.</p> <p>16 Q. Is there a portion of time that you</p> <p>17 don't recall who you reported to?</p> <p>18 A. Yes.</p> <p>19 Q. What portion of time do you have in</p> <p>20 your mind when you can't recall who you</p> <p>21 reported to?</p> <p>22 A. From the 2011 to -- for</p> <p>23 approximately a year or two.</p> <p>24 Q. Okay. So is it fair to say that you</p> <p>25 reported to Mr. Dondero in your capacity as CFO</p>
<p style="text-align: right;">Page 20</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 from at least 2014 until the time you left</p> <p>3 Highland?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't want to speculate the exact</p> <p>6 or what year that changed or -- so I would like</p> <p>7 to stick with my testimony.</p> <p>8 Q. Can you recall when you began</p> <p>9 reporting to Mr. Dondero?</p> <p>10 A. I don't recall.</p> <p>11 Q. Can you -- can you give me an</p> <p>12 estimate of what year you think you might have</p> <p>13 began reporting to Mr. Dondero?</p> <p>14 A. I will go back to my prior</p> <p>15 testimony.</p> <p>16 Q. Okay. There is no -- you have no</p> <p>17 ability to tell me when you began reporting to</p> <p>18 Mr. Dondero.</p> <p>19 Do I have that right?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. Do you recall who you might</p> <p>23 have reported to before you began reporting to</p> <p>24 Mr. Dondero?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Who might you have reported to in</p> <p>3 your capacity as CFO before you started</p> <p>4 reporting to Mr. Dondero?</p> <p>5 A. That would have been Patrick Boyce.</p> <p>6 Q. Are you aware that Highland filed</p> <p>7 for bankruptcy on October 19th, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And we refer to that as the petition</p> <p>10 date?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you hold any professional</p> <p>13 licenses, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Can you tell me what professional</p> <p>16 licenses you hold?</p> <p>17 A. I'm a certified public accountant.</p> <p>18 Q. Okay. Anything else?</p> <p>19 A. No.</p> <p>20 Q. Do you have any other professional</p> <p>21 licenses or certificates?</p> <p>22 A. When you say "professional license,"</p> <p>23 that is not education?</p> <p>24 Q. Tell me -- sure. Anything other</p> <p>25 than a driver's license.</p>

<p style="text-align: right;">Page 22</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do you have any other license or</p> <p>3 certificate or certification?</p> <p>4 A. Are you asking, like, where I went</p> <p>5 to school and the --</p> <p>6 Q. I am not. I am not. I didn't say</p> <p>7 education. I didn't ask about degrees.</p> <p>8 Do you know what a license is?</p> <p>9 A. Well, yeah, I mean, a license is</p> <p>10 something you get after you receive a certain</p> <p>11 level of proficiency.</p> <p>12 Q. Do you have any licenses or</p> <p>13 certifications other than your CPA?</p> <p>14 MS. DANDENEAU: Objection, form.</p> <p>15 I assume you mean professional</p> <p>16 licenses, Mr. Morris; correct?</p> <p>17 Q. Can you answer my question, sir?</p> <p>18 A. Mr. Morris, I'm thinking. I</p> <p>19 don't -- I don't think I have any others.</p> <p>20 Q. Are you familiar with an entity</p> <p>21 called Highland Capital Management Fund</p> <p>22 Advisors?</p> <p>23 A. Yes.</p> <p>24 Q. Were you ever -- can we refer to</p> <p>25 that entity as HCMFA?</p>	<p style="text-align: right;">Page 23</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Were you ever employed by HCMFA?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Were you ever -- did you ever hold</p> <p>6 the title of an officer or director of HCMFA?</p> <p>7 A. Yes.</p> <p>8 Q. What title did you hold?</p> <p>9 A. Treasurer.</p> <p>10 Q. When did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. I don't recall.</p> <p>13 Q. Can you tell me the year?</p> <p>14 A. I don't -- I don't know the year.</p> <p>15 Q. Can you approximate the year in</p> <p>16 which you became the treasurer of HCMFA?</p> <p>17 A. I don't know.</p> <p>18 Q. Can you tell me if it was before or</p> <p>19 after 2016?</p> <p>20 A. I don't recall.</p> <p>21 Q. Are you still the -- do you know if</p> <p>22 you're still the treasurer of HCMFA today?</p> <p>23 A. Today, I am the acting treasurer for</p> <p>24 HCMFA.</p> <p>25 Q. Is there a distinction between</p>
<p style="text-align: right;">Page 24</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer and acting treasurer?</p> <p>3 A. I said "acting treasurer" as I am an</p> <p>4 employee of Skyview, as you previously</p> <p>5 stated -- or asked.</p> <p>6 Q. But you are the treasurer of HCMFA</p> <p>7 today; correct?</p> <p>8 A. I am -- I am the acting treasurer</p> <p>9 for HCMFA.</p> <p>10 Q. How did you become the treasurer of</p> <p>11 HCMFA?</p> <p>12 A. Are you asking how I became the</p> <p>13 treasurer of HCMFA today?</p> <p>14 Q. How did you become appointed to</p> <p>15 serve as the treasurer of HCMFA?</p> <p>16 A. Well, in -- in -- in what time</p> <p>17 capacity?</p> <p>18 Q. The first time that you were</p> <p>19 appointed.</p> <p>20 A. First time. I believe I was asked</p> <p>21 to serve as treasurer for HCMFA the first time.</p> <p>22 Q. By who? Who asked you to do that?</p> <p>23 A. I don't recall.</p> <p>24 Q. Is there anything that would refresh</p> <p>25 your recollection as to who appointed you as</p>	<p style="text-align: right;">Page 25</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the treasurer of CF- -- HCMFA for the first</p> <p>3 time?</p> <p>4 A. I don't -- I mean, there would be</p> <p>5 some documents, some legal documents. I don't</p> <p>6 know where those are.</p> <p>7 Q. How many times have you been</p> <p>8 appointed the treasurer of HCMFA?</p> <p>9 A. I don't know.</p> <p>10 Q. Was it more than once?</p> <p>11 A. I don't know.</p> <p>12 Q. Can you tell me any period of time</p> <p>13 since 2016 that you did not hold the title of</p> <p>14 treasurer of HCMFA?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall.</p> <p>17 Q. What are your duties and</p> <p>18 responsibilities as the treasurer of HCMFA?</p> <p>19 A. My duties are to do the best job</p> <p>20 that I can as the -- as an accountant and</p> <p>21 finance guy.</p> <p>22 Q. What specific duties and</p> <p>23 responsibilities do you have as the treasurer</p> <p>24 of HCMFA?</p> <p>25 A. My duties are to do the best job</p>

<p style="text-align: right;">Page 26</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that I can as the accounting and finance person</p> <p>3 for HCMFA.</p> <p>4 Q. As the accounting and finance person</p> <p>5 for HCMFA, do you have any particular areas of</p> <p>6 responsibility?</p> <p>7 A. Yeah, it is to manage the accounting</p> <p>8 and finance function for HCMFA.</p> <p>9 Q. Would that include -- do you have</p> <p>10 responsibility for overseeing HCMFA's annual</p> <p>11 audit?</p> <p>12 A. Can I please elaborate on my prior</p> <p>13 question?</p> <p>14 Q. Of course. You -- you are giving</p> <p>15 answers. I'm asking questions.</p> <p>16 A. Okay. Yes, so the -- it -- like I</p> <p>17 said, it is to manage the accounting finance</p> <p>18 aspect, but I am, as we discussed, the</p> <p>19 treasurer. That is -- being treasurer is what</p> <p>20 gives me that -- that management function.</p> <p>21 Q. Does anybody report to you in your</p> <p>22 capacity as treasurer of HCMFA?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Does HCMFA have a chief financial</p> <p>25 officer?</p>	<p style="text-align: right;">Page 27</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't -- I don't know.</p> <p>3 Q. You don't know?</p> <p>4 You're the treasurer of HCMFA but</p> <p>5 you don't know if HCMFA has a chief financial</p> <p>6 officer.</p> <p>7 Do I have that right?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. Have you heard of a company</p> <p>10 called NexPoint Advisors?</p> <p>11 A. Yes.</p> <p>12 Q. We will refer to that as NexPoint.</p> <p>13 Okay?</p> <p>14 A. Okay.</p> <p>15 Q. Were you ever employed by NexPoint?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did you ever hold any title with</p> <p>18 respect to the entity known as NexPoint?</p> <p>19 A. Yes.</p> <p>20 Q. What titles have you held in</p> <p>21 relation to NexPoint?</p> <p>22 A. Treasurer. I think it was only</p> <p>23 treasurer.</p> <p>24 Q. Can you tell me the approximate year</p> <p>25 you became the treasurer of NexPoint?</p>
<p style="text-align: right;">Page 28</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. Are you still the treasurer of</p> <p>4 NexPoint today?</p> <p>5 A. I am the acting treasurer for</p> <p>6 NexPoint.</p> <p>7 Q. When did your title change from</p> <p>8 treasurer to acting treasurer?</p> <p>9 A. I don't know.</p> <p>10 Q. Did your duties and responsibilities</p> <p>11 change at all when your title was changed from</p> <p>12 treasurer to acting treasurer?</p> <p>13 A. I don't -- I don't believe so.</p> <p>14 Q. Why did --</p> <p>15 A. I still manage the finance and</p> <p>16 accounting function for NexPoint.</p> <p>17 Q. Why did your title change from</p> <p>18 treasurer to acting treasurer?</p> <p>19 A. I don't -- I'm using the term</p> <p>20 "acting treasurer" as I'm a Skyview employee.</p> <p>21 I don't -- I don't know -- again, I am a -- as</p> <p>22 I am the Skyview employee.</p> <p>23 Q. Okay.</p> <p>24 A. And we -- we provide officer</p> <p>25 services.</p>	<p style="text-align: right;">Page 29</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And you serve as an officer of</p> <p>3 HCMFA; correct?</p> <p>4 A. I think we went over that with my</p> <p>5 testimony. Yes, I'm the acting treasurer for</p> <p>6 HCMFA.</p> <p>7 Q. And you are an officer of NexPoint;</p> <p>8 correct?</p> <p>9 A. I think -- I am the acting treasurer</p> <p>10 for NexPoint Advisors.</p> <p>11 Q. And -- and who appointed you acting</p> <p>12 treasurer of NexPoint Advisors?</p> <p>13 A. I don't recall specifically.</p> <p>14 Q. Do you have any recollection of who</p> <p>15 might have appointed you the treasurer of</p> <p>16 NexPoint?</p> <p>17 A. I mean, it -- it -- I don't recall</p> <p>18 exactly who it was.</p> <p>19 Q. Who were the possibilities?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 Q. You can answer.</p> <p>23 A. Someone in the legal group for</p> <p>24 NexPoint. The other officers as well.</p> <p>25 Q. Have you heard of a company called</p>

<p style="text-align: right;">Page 30</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland Capital Management Services, Inc.?</p> <p>3 A. Yes.</p> <p>4 Q. We will refer to that as HCMS.</p> <p>5 Okay?</p> <p>6 A. HCMS. Okay.</p> <p>7 Q. Were you ever employed by HCMS?</p> <p>8 A. No.</p> <p>9 Q. Have you ever held any titles in</p> <p>10 relation to HCMF -- I apologize -- HCMS?</p> <p>11 A. Yes.</p> <p>12 Q. What titles have you held in</p> <p>13 relation to HCMS?</p> <p>14 A. Treasurer and acting treasurer.</p> <p>15 Q. When did you first become treasurer</p> <p>16 or acting treasurer of HCMS?</p> <p>17 A. I don't recall the exact dates.</p> <p>18 Q. Can you recall -- can you</p> <p>19 approximate the year that you became the</p> <p>20 treasurer of HCMS?</p> <p>21 A. I don't -- I don't know.</p> <p>22 Q. Are you still the treasurer of HCMS</p> <p>23 today?</p> <p>24 A. I am the acting treasurer for HCMS.</p> <p>25 Q. And are your duties and</p>	<p style="text-align: right;">Page 31</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 responsibilities as the acting treasurer for</p> <p>3 HCMS and the acting treasurer for NexPoint the</p> <p>4 same as your duties and responsibilities in</p> <p>5 your role as the acting treasurer of HCMFA?</p> <p>6 A. More or less.</p> <p>7 Q. Have you ever heard of a company</p> <p>8 called HCRE Partners, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. And do you understand that that</p> <p>11 entity is now known today as NexPoint Real</p> <p>12 Estate Partners?</p> <p>13 A. I did not know that.</p> <p>14 Q. All right. Can we refer to HCRE</p> <p>15 Partners as HCRE?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 Did you mean NexPoint Real Estate</p> <p>18 Partners, Mr. Morris?</p> <p>19 MR. MORRIS: No.</p> <p>20 MS. DANDENEAU: Oh.</p> <p>21 MR. MORRIS: He said he wasn't</p> <p>22 familiar that it was succeeded by that</p> <p>23 entity. So --</p> <p>24 MS. DANDENEAU: Okay.</p> <p>25 MR. MORRIS: -- let's go with what</p>
<p style="text-align: right;">Page 32</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the witness knows.</p> <p>3 Q. You're familiar with an entity</p> <p>4 called HCRE Partners, LLC; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So that is the entity that we</p> <p>7 will refer to as HCRE. If you're aware of any</p> <p>8 successor, that is great. If not, let's just</p> <p>9 define it as such.</p> <p>10 Have you ever been employed by HCRE</p> <p>11 or any entity that you know to have succeeded</p> <p>12 HCRE?</p> <p>13 A. No.</p> <p>14 Q. Did you ever serve as an officer or</p> <p>15 director of HCRE or any successor?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Can we refer to NexPoint and</p> <p>18 HCMFA as the advisors?</p> <p>19 A. Yes.</p> <p>20 Q. In general, the advisors provided</p> <p>21 investment advisory services to certain retail</p> <p>22 funds; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And we will refer to the retail</p> <p>25 funds that are served by the advisors</p>	<p style="text-align: right;">Page 33</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 collectively as the retail funds; is that okay?</p> <p>3 A. Okay.</p> <p>4 Q. Each of the retail funds is governed</p> <p>5 by a board; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know the people who serve</p> <p>8 on the boards of the retail funds?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. I don't know all of them.</p> <p>11 Q. Do you know whether the same people</p> <p>12 serve on the board of each of the retail funds</p> <p>13 as we've defined that term?</p> <p>14 A. Which -- so when you say "retail</p> <p>15 funds" -- again, I want to be -- what retail</p> <p>16 funds are you referring to, because there are</p> <p>17 -- there are several distinctions?</p> <p>18 What retail funds are you using when</p> <p>19 you refer to them?</p> <p>20 Q. That is why -- that is why I tried</p> <p>21 to define the terms. So let me do it again.</p> <p>22 Retail funds for the purposes of</p> <p>23 this deposition means any retail fund to which</p> <p>24 either of the advisors provides advisory</p> <p>25 services. Okay?</p>

<p style="text-align: right;">Page 34</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Okay.</p> <p>3 Q. Okay. So do you know whether the</p> <p>4 same people serve on the board of each of the</p> <p>5 retail funds?</p> <p>6 A. I don't know.</p> <p>7 Q. Were you ever employed by any of the</p> <p>8 retail funds?</p> <p>9 A. No.</p> <p>10 Q. No?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you have any title with</p> <p>13 respect to any of the retail funds?</p> <p>14 A. Yes.</p> <p>15 Q. What titles do you hold --</p> <p>16 withdrawn.</p> <p>17 Do you have the same titles with</p> <p>18 respect to all of the retail funds or do</p> <p>19 they -- or just something else?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 Q. Withdrawn.</p> <p>22 Do you have the same title with</p> <p>23 respect to each of the retail funds?</p> <p>24 A. No.</p> <p>25 Q. Tell me which title you have with</p>	<p style="text-align: right;">Page 35</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 respect to each retail fund.</p> <p>3 Actually, let's do it a different</p> <p>4 way. I withdraw the question.</p> <p>5 Can you give me one title you have</p> <p>6 in relation to any retail fund?</p> <p>7 A. Yes.</p> <p>8 Q. What title -- what title can you</p> <p>9 give me?</p> <p>10 A. Principal executive officer.</p> <p>11 Q. Do you serve as principal executive</p> <p>12 officer for each of the retail funds?</p> <p>13 A. No.</p> <p>14 Q. Can you identify for me the retail</p> <p>15 funds in which you serve as the principal</p> <p>16 executive officer?</p> <p>17 A. Yes. Highland Funds 1, Highland</p> <p>18 Funds 2, Highland Income Fund, Highland Global</p> <p>19 Allocation Fund.</p> <p>20 Q. I'm sorry, you said "Global</p> <p>21 Allocation Fund"?</p> <p>22 A. Yes.</p> <p>23 VIDEOGRAPHER: Excuse me,</p> <p>24 Mr. Morris. This is the videographer. I'm</p> <p>25 concerned about the lighting in the</p>
<p style="text-align: right;">Page 36</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 witness' camera.</p> <p>3 Do you want to go off the record and</p> <p>4 make some adjustments?</p> <p>5 MR. MORRIS: Sure, but just for this</p> <p>6 purpose. I don't want to take a break. We</p> <p>7 just started.</p> <p>8 MS. DANDENEAU: Yeah, that is fine.</p> <p>9 That is fine. We're going to put you on</p> <p>10 mute.</p> <p>11 MR. MORRIS: All right.</p> <p>12 MS. DANDENEAU: I'm going to try to</p> <p>13 open up some of the shades.</p> <p>14 VIDEOGRAPHER: We're going off the</p> <p>15 record at 10:08 a.m.</p> <p>16 (Recess taken 10:08 a.m. to 10:11 a.m.)</p> <p>17 VIDEOGRAPHER: We are back on the</p> <p>18 record at 10:11 a.m.</p> <p>19 Q. Mr. Waterhouse, when did you become</p> <p>20 the principal executive officer of the four</p> <p>21 retail funds that you just identified?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall the approximate year</p> <p>24 that you became the principal executive officer</p> <p>25 of the four funds?</p>	<p style="text-align: right;">Page 37</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. 2021.</p> <p>3 Q. Did you ever hold any title with</p> <p>4 respect to any of the four funds you have just</p> <p>5 identified other than principal executive</p> <p>6 officer?</p> <p>7 A. I don't recall.</p> <p>8 Q. Is it possible that you held a</p> <p>9 position or a title with the four funds you</p> <p>10 just identified prior to 2021?</p> <p>11 A. Yes.</p> <p>12 Q. But you don't recall if you did or</p> <p>13 not; do I have that right?</p> <p>14 A. No. You -- I thought you asked, did</p> <p>15 I hold other titles.</p> <p>16 Q. Did you hold any title at the four</p> <p>17 retail funds for which you now serve as</p> <p>18 principal executive officer at any time prior</p> <p>19 to 2021?</p> <p>20 A. Yes.</p> <p>21 Q. What titles did you hold?</p> <p>22 A. I don't recall all the titles.</p> <p>23 Q. Do you recall any of the titles?</p> <p>24 A. Yes.</p> <p>25 Q. What titles do you recall holding at</p>

<p style="text-align: right;">Page 38</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 those four retail funds before 2021?</p> <p>3 A. Principal executive officer.</p> <p>4 Q. Were you the principal executive</p> <p>5 officer of the four retail funds that you have</p> <p>6 identified?</p> <p>7 A. Sorry, could you repeat the</p> <p>8 question?</p> <p>9 Q. Were you the principal executive</p> <p>10 officer for each of the four retail funds that</p> <p>11 you have identified?</p> <p>12 A. Yes.</p> <p>13 Q. When did you become the principal</p> <p>14 executive -- withdrawn.</p> <p>15 Can you give me the approximate year</p> <p>16 that you became the principal executive officer</p> <p>17 for each of the four retail funds you've</p> <p>18 identified?</p> <p>19 A. I don't recall.</p> <p>20 Q. What are your duties and</p> <p>21 responsibilities as the principal executive</p> <p>22 officer of these four retail funds?</p> <p>23 A. It is to manage the finance and</p> <p>24 accounting positions.</p> <p>25 Q. So at the same time you serve as the</p>	<p style="text-align: right;">Page 39</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 treasurer of the advisors, you also serve as</p> <p>3 the principal executive officer of these four</p> <p>4 retail funds; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever hold any title with</p> <p>7 respect to any other retail fund?</p> <p>8 A. Not that I recall.</p> <p>9 Q. During the period that you served as</p> <p>10 Highland's CFO, from time to time Highland</p> <p>11 loaned money to certain of its officers and</p> <p>12 employees; correct?</p> <p>13 A. Yes.</p> <p>14 Q. During the period that you served as</p> <p>15 Highland's CFO, from time to time Highland</p> <p>16 loaned money to certain --</p> <p>17 A. Let me -- let me retract that,</p> <p>18 sorry, that -- you asked during the time I was</p> <p>19 CFO, Highland loaned moneys to employees. I</p> <p>20 don't -- I don't recall that during my tenure</p> <p>21 of CFO.</p> <p>22 Q. You have no recollection during the</p> <p>23 time that you were the CFO of Highland of</p> <p>24 Highland ever loaning any money to any officer</p> <p>25 or director of Highland?</p>
<p style="text-align: right;">Page 40</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall during my tenure of</p> <p>3 Highland or my -- as CFO of Highland -- yeah,</p> <p>4 if there are any loans as CFO of Highland.</p> <p>5 Q. I'm just talking about officers and</p> <p>6 employees right now. You have no recollection</p> <p>7 of Highland ever making a loan to any of its</p> <p>8 officers or employees during the time that you</p> <p>9 served as CFO. Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. So I thought you were saying</p> <p>12 officers and employees as CFO, right, so there</p> <p>13 were -- I mean, okay, yes.</p> <p>14 Q. I would ask you to listen carefully</p> <p>15 to my question. If I -- if I'm not clear, let</p> <p>16 me know, but I'm really trying to be as clear</p> <p>17 as I can.</p> <p>18 A. I'm listening as carefully as I can,</p> <p>19 and you are asking very specific questions in a</p> <p>20 timeline. And I'm trying to answer your</p> <p>21 questions as specifically as I can, and I</p> <p>22 apologize if -- if I'm going back. I am -- you</p> <p>23 are asking very specific questions. Thank you.</p> <p>24 Q. During the period that you served as</p> <p>25 Highland's CFO, from time to time Highland</p>	<p style="text-align: right;">Page 41</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loaned money to certain corporate affiliates;</p> <p>3 correct?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. What are corporate affiliates?</p> <p>6 Q. How about the ones that are in</p> <p>7 Highland's audited financial statements under</p> <p>8 the section entitled Loans to Affiliates. Why</p> <p>9 don't we start with those. Do you have any</p> <p>10 understanding of what the phrase "affiliates"</p> <p>11 means?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I understand what affiliates are,</p> <p>14 yet affiliates can have different meanings in</p> <p>15 different contexts, so...</p> <p>16 Q. Why don't you -- why don't you tell</p> <p>17 me what your understanding of the term</p> <p>18 "affiliate" is in relation to Highland Capital</p> <p>19 Management, L.P.</p> <p>20 A. Is that a -- it depends on the</p> <p>21 context.</p> <p>22 Q. How about the context of making</p> <p>23 loans?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I didn't make the determination of</p>



<p style="text-align: right;">Page 42</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 who an affiliate was or is at the time those --</p> <p>3 I didn't -- that wasn't my job to make a</p> <p>4 determination of who an affiliate is.</p> <p>5 Q. All right. So as the CFO of</p> <p>6 Highland, do you have any ability right now to</p> <p>7 tell me which companies that were directly or</p> <p>8 indirectly owned and/or controlled by</p> <p>9 Mr. Dondero in whole or in part received loans</p> <p>10 from Highland Capital Management, L.P.?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 MS. DEITSCH-PEREZ: Objection, form.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Identify every entity that</p> <p>15 you can think of that was directly or</p> <p>16 indirectly owned and/or controlled by</p> <p>17 Mr. Dondero in whole or in part that received a</p> <p>18 loan from Highland Capital Management, L.P.</p> <p>19 MR. RUKAVINA: Objection, legal</p> <p>20 conclusion.</p> <p>21 A. NexPoint Advisors, Highland Capital</p> <p>22 Management Fund Advisors, HCM Services,</p> <p>23 Dugaboy. Sorry, I don't think -- Dugaboy</p> <p>24 doesn't fit that definition. You said owned</p> <p>25 and controlled. I don't think that that</p>	<p style="text-align: right;">Page 43</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 definition --</p> <p>3 Q. I said owned and/or controlled.</p> <p>4 A. I don't -- again, I'm not -- I'm not</p> <p>5 the legal expert. I don't think it controls --</p> <p>6 he controls Dugaboy, so again, I'm not the</p> <p>7 legal person.</p> <p>8 Q. I'm not asking you for a legal</p> <p>9 conclusion, sir. I'm asking you for your</p> <p>10 knowledge, okay, as the CFO -- the former CFO</p> <p>11 of Highland Capital Management, other than</p> <p>12 NexPoint, HCMFA, and HCMF -- HCMS, can you</p> <p>13 think of any other entities that were owned</p> <p>14 and/or controlled directly or indirectly in</p> <p>15 whole or in part by Jim Dondero who received a</p> <p>16 loan from Highland Capital Management, L.P.?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. HCRE.</p> <p>19 Q. Any others?</p> <p>20 A. That is -- that is all I can think</p> <p>21 of.</p> <p>22 Q. And you're aware that from time to</p> <p>23 time while you were the CFO, Highland loaned</p> <p>24 money to Jim Dondero; correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 44</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Can we refer to the four</p> <p>3 entities that you just named and Mr. Dondero as</p> <p>4 the affiliates?</p> <p>5 A. So that would be Jim Dondero,</p> <p>6 NexPoint Advisors, Highland Capital Management</p> <p>7 Fund Advisors, and HCRE.</p> <p>8 Q. And HCMS?</p> <p>9 A. And HCMS, okay.</p> <p>10 Q. And can we refer to the loans that</p> <p>11 were given to each of those affiliates as the</p> <p>12 affiliate loans?</p> <p>13 A. Yes.</p> <p>14 Q. And is it fair to say that each of</p> <p>15 the affiliates were the borrowers under the</p> <p>16 affiliate loans as we're defining the term?</p> <p>17 MR. RUKAVINA: Objection, legal</p> <p>18 conclusion.</p> <p>19 A. The borrowers are whoever were on</p> <p>20 the notes. I don't -- I don't know. I'm not</p> <p>21 the legal person.</p> <p>22 Q. But you --</p> <p>23 A. I don't know.</p> <p>24 Q. You do know, as Highland's former</p> <p>25 CFO, that each of the affiliates that you have</p>	<p style="text-align: right;">Page 45</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 identified tendered notes to Highland; correct?</p> <p>3 MR. RUKAVINA: Hey, John, will you</p> <p>4 just give me a running objection to legal</p> <p>5 conclusion to HCM --</p> <p>6 MR. MORRIS: No. No, if you want to</p> <p>7 object --</p> <p>8 MR. RUKAVINA: I will object every</p> <p>9 time. Object to legal conclusion.</p> <p>10 MR. MORRIS: That is fine.</p> <p>11 A. Sorry, can you repeat the question?</p> <p>12 Q. Are you aware that each of the --</p> <p>13 that each of the affiliates, as we have defined</p> <p>14 the term, gave to Highland a promissory note in</p> <p>15 exchange for the loans?</p> <p>16 MR. RUKAVINA: Objection to the</p> <p>17 extent that calls for a legal conclusion.</p> <p>18 A. I don't.</p> <p>19 Q. No, you don't know that?</p> <p>20 A. No, they didn't -- you said they</p> <p>21 exchanged a promissory note for a loan. I</p> <p>22 don't -- I don't understand that question, so I</p> <p>23 said no.</p> <p>24 Q. At the time of the bankruptcy</p> <p>25 filing, did Highland have in its possession</p>

<p style="text-align: right;">Page 46</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that were signed by each of</p> <p>3 the affiliates?</p> <p>4 A. Yes.</p> <p>5 Q. To the best of your knowledge,</p> <p>6 during the time that you served as Highland's</p> <p>7 CFO, did Highland disclose to its outside</p> <p>8 auditors all of the loans that were made to</p> <p>9 affiliates?</p> <p>10 MR. RUKAVINA: Objection, that calls</p> <p>11 for a legal conclusion.</p> <p>12 MS. DEITSCH-PEREZ: I also couldn't</p> <p>13 hear you, John, because there was some</p> <p>14 garbling on -- on the -- on the call.</p> <p>15 MR. MORRIS: Folks, I've got to tell</p> <p>16 you this is not going well, and I'm</p> <p>17 reserving my right --</p> <p>18 MS. DANDENEAU: John, it was just</p> <p>19 the end of that question. It was just the</p> <p>20 end of that question. I couldn't hear it</p> <p>21 either. Sorry, if you could repeat it,</p> <p>22 please.</p> <p>23 MR. MORRIS: That is less than an</p> <p>24 hour into this, but folks are trying to run</p> <p>25 out the clock, and so I'm just going to</p>	<p style="text-align: right;">Page 47</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 state that now.</p> <p>3 MS. DANDENEAU: You know, and,</p> <p>4 Mr. Morris, I really object to that. I</p> <p>5 mean --</p> <p>6 MR. MORRIS: Okay.</p> <p>7 MS. DANDENEAU: -- Mr. Waterhouse</p> <p>8 just told you he's trying to listen to your</p> <p>9 questions and answer them carefully, and</p> <p>10 you have no basis for saying that.</p> <p>11 MR. MORRIS: Okay.</p> <p>12 MS. DANDENEAU: This does not --</p> <p>13 this is not an experienced witness, so he's</p> <p>14 trying to do the best he can.</p> <p>15 Q. Mr. Waterhouse, during the time that</p> <p>16 you served as Highland's CFO, did Highland</p> <p>17 disclose to its outside auditors all of the</p> <p>18 loans that it made to each of the affiliates</p> <p>19 that you have identified?</p> <p>20 MR. RUKAVINA: Objection, legal</p> <p>21 conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. To the best of your knowledge, while</p> <p>24 you were Highland's CFO, were all of the</p> <p>25 affiliate loans described in Highland's audited</p>
<p style="text-align: right;">Page 48</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financial statements?</p> <p>3 MR. RUKAVINA: Objection, legal</p> <p>4 conclusion.</p> <p>5 A. When an audit was performed, any</p> <p>6 loans that were made by Highland to the</p> <p>7 affiliates were disclosed to auditors.</p> <p>8 Q. Are you aware of any loan that was</p> <p>9 made to any affiliate that was not disclosed to</p> <p>10 the auditors?</p> <p>11 A. I'm not aware.</p> <p>12 Q. To the best of your knowledge, did</p> <p>13 each of the affiliates who were --</p> <p>14 (inaudible) -- loaned from Highland execute a</p> <p>15 promissory note in connection with that loan?</p> <p>16 MR. RUKAVINA: Objection, legal</p> <p>17 conclusion.</p> <p>18 A. Sorry, you -- halfway through the</p> <p>19 question it got muffled.</p> <p>20 Can you repeat that again?</p> <p>21 Q. To the best of your knowledge, did</p> <p>22 every affiliate execute a promissory note in</p> <p>23 connection with each loan that it obtained from</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, legal</p>	<p style="text-align: right;">Page 49</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conclusion.</p> <p>3 A. Yes.</p> <p>4 Q. You are not aware of any loan that</p> <p>5 any affiliate ever obtained from Highland where</p> <p>6 the affiliate did not give a promissory note in</p> <p>7 return; is that fair?</p> <p>8 A. Yes, I'm not aware.</p> <p>9 Q. And to the best of your knowledge,</p> <p>10 did Highland loan to each affiliate an amount</p> <p>11 of money equal to the principal amount of each</p> <p>12 promissory note?</p> <p>13 MR. RUKAVINA: Objection, legal</p> <p>14 conclusion.</p> <p>15 A. Yes.</p> <p>16 Q. During the time that you served as</p> <p>17 CFO, did Highland ever loan money to</p> <p>18 Mark Okada?</p> <p>19 A. I -- I don't recall.</p> <p>20 Q. Did you ever see any promissory</p> <p>21 notes executed by Mark Okada?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you know if Highland ever forgave</p> <p>24 any loan that it ever made to Mr. Okada?</p> <p>25 A. I don't recall.</p>



<p style="text-align: right;">Page 50</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you recall if Mr. Okada paid back</p> <p>3 all principal and interest due and owing under</p> <p>4 any loan he obtained from Highland?</p> <p>5 MS. DEITSCH-PEREZ: Objection to</p> <p>6 form.</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall whether -- during your</p> <p>10 time as CFO, whether Highland ever loaned money</p> <p>11 to Jim Dondero?</p> <p>12 A. Yes.</p> <p>13 Q. To the best of your knowledge, did</p> <p>14 Mr. Dondero sign and deliver to Highland a</p> <p>15 promissory note in connection with each loan</p> <p>16 that he obtained from Highland?</p> <p>17 A. If you are referring to the</p> <p>18 promissory notes that, you know, part of</p> <p>19 Highland's records, yes.</p> <p>20 Q. Okay. You're not aware of any loan</p> <p>21 that Mr. Dondero took from Highland that wasn't</p> <p>22 backed up by -- by a promissory note with a</p> <p>23 face -- with a principal amount equal to the</p> <p>24 amount of the loan; correct?</p> <p>25 A. Am I aware that Jim Dondero took a</p>	<p style="text-align: right;">Page 51</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loan?</p> <p>3 Q. Without giving a -- let me ask a</p> <p>4 better question. I'm sorry, Mr. Waterhouse.</p> <p>5 Are you aware of any loan that</p> <p>6 Mr. Dondero obtained from Highland where he</p> <p>7 didn't give a promissory note in return?</p> <p>8 A. I'm not aware.</p> <p>9 Q. During the time that you served as</p> <p>10 Highland's CFO, did Highland ever forgive any</p> <p>11 loans, in whole or in part, that it made to</p> <p>12 Mr. Dondero?</p> <p>13 A. Not that I'm aware.</p> <p>14 Q. At the time that you served as</p> <p>15 Highland's CFO, did Highland ever forgive any</p> <p>16 loan, in whole or in part, that it made to any</p> <p>17 affiliate as we've defined the term today?</p> <p>18 A. Not that I'm aware.</p> <p>19 Q. During the time that you served as</p> <p>20 Highland's CFO, did Highland ever forgive, in</p> <p>21 whole or in part, any loan that it ever made to</p> <p>22 any officer or employee?</p> <p>23 A. Highland forgave loans to officers</p> <p>24 and employees. It may not have been at the</p> <p>25 time when my title was CFO.</p>
<p style="text-align: right;">Page 52</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And so I appreciate the</p> <p>3 distinction.</p> <p>4 Is it fair to say that, to the best</p> <p>5 of your knowledge, Highland did not forgive a</p> <p>6 loan that it made to an officer or employee</p> <p>7 after 2013?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. I don't recall.</p> <p>10 Q. To the best of your knowledge, did</p> <p>11 Highland disclose to its auditors every</p> <p>12 instance where it forgave, in whole or in part,</p> <p>13 a loan that it had made to one of its officers</p> <p>14 or employees?</p> <p>15 A. No.</p> <p>16 Q. Can you think of -- can you -- can</p> <p>17 you identify any loan to an officer or employee</p> <p>18 that was forgiven by Highland, in whole or in</p> <p>19 part, that was not disclosed to Highland's</p> <p>20 outside auditors?</p> <p>21 A. Look, I don't recall all of the</p> <p>22 loans and the loan forgiveness. I just know as</p> <p>23 part of the audit process there is a</p> <p>24 materiality concept.</p> <p>25 So if there were loans to employees</p>	<p style="text-align: right;">Page 53</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were of -- you know, that were deemed</p> <p>3 immaterial, those items may not have been</p> <p>4 disclosed by the team to the auditors.</p> <p>5 Q. I appreciate that.</p> <p>6 Do you have an understanding as to</p> <p>7 what the level of materiality was?</p> <p>8 A. I don't recall.</p> <p>9 Q. As the CFO of Highland, to the best</p> <p>10 of your knowledge, did Highland disclose to its</p> <p>11 outside auditors every loan that was forgiven,</p> <p>12 in whole or in part, that was material as that</p> <p>13 term was defined by the outside auditors?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall where -- do you</p> <p>16 recall where the definition of materiality can</p> <p>17 be found for -- for this particular purpose?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. No. You -- I don't determine</p> <p>20 materiality.</p> <p>21 Q. Okay. I'm just asking you if you</p> <p>22 can help me understand where it is, but I think</p> <p>23 we will find it in a few minutes.</p> <p>24 You are aware that Highland has</p> <p>25 commenced lawsuits against each of the</p>

<p style="text-align: right;">Page 54</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates, as we've defined the term, to</p> <p>3 collect under certain promissory notes; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And are you familiar with the notes</p> <p>7 that are issue -- at issue in the lawsuits?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 A. Generally familiar.</p> <p>10 Q. Can we refer to the lawsuits that</p> <p>11 Highland has commenced against the affiliates</p> <p>12 collectively as the lawsuits?</p> <p>13 A. Yes. And, again, the affiliates are</p> <p>14 NexPoint, HCMFA, HCMS, and HCRE.</p> <p>15 Q. And Mr. Dondero?</p> <p>16 A. Okay. See, that is a new -- and now</p> <p>17 Mr. Dondero is included in your affiliate</p> <p>18 definition.</p> <p>19 Q. I just --</p> <p>20 A. I thought affiliates -- I thought</p> <p>21 affiliates were just the four prior entities,</p> <p>22 so I just want to be clear.</p> <p>23 Q. I appreciate that. So let's --</p> <p>24 let's keep them separate and let's refer to the</p> <p>25 four corporate entities as the affiliates, and</p>	<p style="text-align: right;">Page 55</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero we will call Mr. Dondero. Okay?</p> <p>3 A. Okay. Thank you. As you can see,</p> <p>4 Mr. Morris, there is a lot of entities -- a lot</p> <p>5 here. I just want to be clear.</p> <p>6 Q. Okay. Now, the affiliates of</p> <p>7 Mr. Dondero signed promissory notes that are</p> <p>8 not subject to the lawsuit.</p> <p>9 Do you understand that?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. The affiliates and Mr. Dondero</p> <p>12 signed --</p> <p>13 Q. You know what? I will skip it.</p> <p>14 That is okay. Okay.</p> <p>15 From time to time while you were</p> <p>16 Highland's CFO, payments were applied against</p> <p>17 principal and interests that were due under the</p> <p>18 notes that were tendered by the affiliates and</p> <p>19 Mr. Dondero; correct?</p> <p>20 MR. RUKAVINA: Objection to the</p> <p>21 extent that calls for a legal conclusion.</p> <p>22 A. Yes.</p> <p>23 Q. Did Highland have a process where --</p> <p>24 whereby payments would be applied against</p> <p>25 principal and interest against the notes that</p>
<p style="text-align: right;">Page 56</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were given by the affiliates and Mr. Dondero?</p> <p>3 A. Yes.</p> <p>4 Q. Can you describe the process for me?</p> <p>5 A. The process, payment should be</p> <p>6 applied as laid out in the -- in the promissory</p> <p>7 note.</p> <p>8 Q. From time to time were payments made</p> <p>9 that were not required under the promissory</p> <p>10 notes?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. Who was responsible for deciding</p> <p>14 when and how much the payments would be made</p> <p>15 with respect to each of the notes that were</p> <p>16 issued by the affiliates and Mr. Dondero?</p> <p>17 A. Who was responsible for deciding how</p> <p>18 much was paid prior to the due date?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know.</p> <p>21 Q. Did you approve of each payment that</p> <p>22 was made against principal and interest on the</p> <p>23 notes that were given by the affiliates and</p> <p>24 Mr. Dondero?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p style="text-align: right;">Page 57</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Did I approve the payments? I</p> <p>3 approve -- I approve -- if there was cash -- if</p> <p>4 there was cash being repaid on a note payment,</p> <p>5 yes, I approved in the general sense of being</p> <p>6 made aware of the payment and the amount.</p> <p>7 Q. And are you the person who</p> <p>8 authorized Highland's employees to effectuate</p> <p>9 those payments?</p> <p>10 A. Yes.</p> <p>11 Q. When you gave the instruction to</p> <p>12 effectuate the payment, did you obtain</p> <p>13 Mr. Dondero's prior approval?</p> <p>14 A. I mean, it -- I mean, it -- it</p> <p>15 depends.</p> <p>16 Q. Can you think of any instance where</p> <p>17 you directed Highland's employees to make a</p> <p>18 payment of principal or interest against any</p> <p>19 note that was tendered by an affiliate or</p> <p>20 Mr. Dondero that Mr. Dondero did not approve of</p> <p>21 in advance?</p> <p>22 A. I can't recall specifically.</p> <p>23 Q. Can you identify -- withdrawn.</p> <p>24 Did Mr. Dondero ever tell you that a</p> <p>25 payment that was made against principal and</p>

<p style="text-align: right;">Page 58</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 interest due under one of the notes that was</p> <p>3 tendered by an affiliate or himself should not</p> <p>4 have been made?</p> <p>5 A. Yes.</p> <p>6 Q. Can you identify the payment for me?</p> <p>7 A. It would be for -- for NexPoint</p> <p>8 Advisors.</p> <p>9 Q. Okay. And when did Mr. Dondero tell</p> <p>10 you that a payment that you had initiated on</p> <p>11 behalf of NexPoint should not have been made?</p> <p>12 A. I wasn't initiating payment. It was</p> <p>13 in the context of the -- I think you used this</p> <p>14 term, "the advisors," so NexPoint Advisors and</p> <p>15 Highland Capital Management Fund Advisors had</p> <p>16 overpaid on certain agreements with Highland</p> <p>17 Capital Management, L.P. And as a part of that</p> <p>18 process, the advisors -- what I was told at the</p> <p>19 time were in talks and negotiations and</p> <p>20 discussions with Highland Capital Management,</p> <p>21 L.P., on offsets in relation to those</p> <p>22 overpayments.</p> <p>23 Q. When did this conversation take</p> <p>24 place?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p style="text-align: right;">Page 59</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall what year it was?</p> <p>4 A. Yes.</p> <p>5 Q. What year did the conversation with</p> <p>6 Mr. Dondero take place that you just described?</p> <p>7 A. 2020.</p> <p>8 Q. Okay. Do you remember if it was</p> <p>9 December 2020?</p> <p>10 A. It -- it -- I don't -- I don't</p> <p>11 recall what month specifically, but it would</p> <p>12 have been November or December.</p> <p>13 Q. And we're talking here about a</p> <p>14 payment of principal and/or interest that was</p> <p>15 due -- withdrawn.</p> <p>16 We're talking here about a payment</p> <p>17 of principal and interest that was applied</p> <p>18 against NexPoint's note; correct?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall what that payment</p> <p>21 consisted of.</p> <p>22 Q. Is it possible that the payment you</p> <p>23 have in mind related to the shared services</p> <p>24 agreement?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p style="text-align: right;">Page 60</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Are you certain that the payment --</p> <p>4 that the payment that you have in mind related</p> <p>5 to the promissory note that NexPoint issued in</p> <p>6 favor of Highland?</p> <p>7 MS. DANDENEAU: Objection to form.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Other than that one payment,</p> <p>10 can you identify any other instance where</p> <p>11 Mr. Dondero told you that a payment should not</p> <p>12 have been applied against principal and</p> <p>13 interest under any promissory note tendered by</p> <p>14 any affiliate or Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Objection to</p> <p>17 form.</p> <p>18 A. Not that I recall.</p> <p>19 Q. Thank you very much.</p> <p>20 Do you know if Mr. Dondero approved</p> <p>21 in advance of each loan made to each affiliate</p> <p>22 and himself during the time that you were the</p> <p>23 CFO?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p style="text-align: right;">Page 61</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, generally.</p> <p>3 Q. Can you identify any loan that was</p> <p>4 ever made to an affiliate or to Mr. Dondero</p> <p>5 that Mr. Dondero did not approve of in advance?</p> <p>6 A. Other than the ones that are in</p> <p>7 dispute, I'm not aware.</p> <p>8 Q. Do you believe that Mr. Dondero did</p> <p>9 not approve of each of the loans that are in</p> <p>10 dispute in advance of the time that the loan</p> <p>11 was made?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Given what is in the dispute, you</p> <p>14 know, and -- and -- and the way things might --</p> <p>15 yeah, I mean...</p> <p>16 Q. I am not asking about the dispute,</p> <p>17 and it was probably my mistake to follow you</p> <p>18 there.</p> <p>19 Were you aware of every loan made by</p> <p>20 Highland to each of its affiliates and</p> <p>21 Mr. Dondero while you were the CFO at the time</p> <p>22 each loan was made?</p> <p>23 A. Was I aware of every loan, yes.</p> <p>24 Q. Okay. And if you put yourself back</p> <p>25 in time, do you recall that any of the loans</p>

<p style="text-align: right;">Page 62</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that were made to one of the affiliates or</p> <p>3 Mr. Dondero during the time that you were the</p> <p>4 CFO was made without Mr. Dondero's prior</p> <p>5 knowledge and approval?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Thank you. In fact, do you -- as</p> <p>8 the CFO, would you have allowed Highland to</p> <p>9 loan money to an affiliate or to Mr. Dondero</p> <p>10 without obtaining Mr. Dondero's prior approval?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I can't -- there was so many times</p> <p>13 over the years, I can't speak for every single</p> <p>14 one, but generally, yes, I -- I spoke to him.</p> <p>15 Q. You -- you never -- you never --</p> <p>16 withdrawn. I will just take that.</p> <p>17 Can you recall any payment that was</p> <p>18 ever made against principal and interest on a</p> <p>19 note that was issued in favor of Highland by an</p> <p>20 affiliate or Mr. Dondero that you personally</p> <p>21 did not know about in advance?</p> <p>22 A. There are so many through the years,</p> <p>23 I don't -- I don't -- I don't recall every</p> <p>24 single one.</p> <p>25 Q. Okay. Can you identify any payment</p>	<p style="text-align: right;">Page 63</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 that was made against principal and interest on</p> <p>3 any note tendered by any affiliate or</p> <p>4 Mr. Dondero that you didn't know about in</p> <p>5 advance?</p> <p>6 A. I don't recall.</p> <p>7 Q. Other than Mr. Dondero -- withdrawn.</p> <p>8 Did anybody at Highland have the</p> <p>9 authority to make a payment against principal</p> <p>10 and interest due under a loan given to the</p> <p>11 affiliates and Mr. Dondero without your</p> <p>12 knowledge and approval?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Sorry, there was -- to make a</p> <p>15 payment on an affiliate loan, what you are</p> <p>16 saying would it require my knowledge and</p> <p>17 approval, yes.</p> <p>18 Q. Okay. I appreciate that. Thank</p> <p>19 you.</p> <p>20 Did anybody at Highland have the</p> <p>21 authority, to the best of your knowledge, to</p> <p>22 effectuate a loan to an affiliate without</p> <p>23 Mr. Dondero's prior knowledge and approval?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I can't speak for all, but</p>
<p style="text-align: right;">Page 64</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 generally, yes.</p> <p>3 Q. Did you personally communicate with</p> <p>4 Mr. Dondero to let him know each time a payment</p> <p>5 of principal or interest was being made against</p> <p>6 any note that was tendered by an affiliate or</p> <p>7 Mr. Dondero to Highland?</p> <p>8 A. I don't -- are you saying, did I let</p> <p>9 Mr. Dondero know if a payment was made on any</p> <p>10 affiliate or loan to Mr. Dondero? I mean,</p> <p>11 not -- not every -- no.</p> <p>12 Q. Let me ask it this way: Did you</p> <p>13 have a practice of informing Mr. Dondero when</p> <p>14 payments were made against principal and</p> <p>15 interest on any note that was tendered by an</p> <p>16 affiliate or Mr. Dondero?</p> <p>17 MS. DEITSCH-PEREZ: Objection to</p> <p>18 form.</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. No, I did not.</p> <p>21 Q. Did Mr. Dondero ever tell you that a</p> <p>22 payment of principal or interest had been made</p> <p>23 against a note that was tendered by an</p> <p>24 affiliate or himself that he had been unaware</p> <p>25 of?</p>	<p style="text-align: right;">Page 65</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Are you aware that Mr. Dondero and</p> <p>4 the affiliates -- withdrawn.</p> <p>5 Are you aware that Mr. Dondero</p> <p>6 NexPoint, HCRE, and HCMS all contend that they</p> <p>7 do not have to pay on any of the notes they</p> <p>8 issued because they are subject to an oral</p> <p>9 agreement between Mr. Dondero and Nancy</p> <p>10 Dondero, in her capacity as the trustee of the</p> <p>11 Dugaboy Investment Trust?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I didn't -- I didn't -- I didn't</p> <p>14 know that it was all notes.</p> <p>15 Q. Okay. Are you -- did you ever learn</p> <p>16 that there was an oral agreement between Jim</p> <p>17 Dondero and Nancy Dondero pertaining to any</p> <p>18 notes issued by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 the terms of that agreement?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the</p>

<p style="text-align: right;">Page 66</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 terms of the agreement?</p> <p>3 A. That there were certain milestones</p> <p>4 that had to be reached.</p> <p>5 Q. Do you have any understanding of the</p> <p>6 terms of the agreement between Mr. Dondero and</p> <p>7 Nancy Dondero concerning any of the notes</p> <p>8 issued by the affiliates or Mr. Dondero other</p> <p>9 than that there have to be milestones reached?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. There are milestones, I found out</p> <p>13 yesterday, or there was some --</p> <p>14 MS. DANDENEAU: Okay. I'm just</p> <p>15 going to object to the extent that you</p> <p>16 learned anything in conversations with</p> <p>17 counsel, please don't reveal -- that is</p> <p>18 privileged, and don't reveal any privileged</p> <p>19 communications.</p> <p>20 THE WITNESS: Okay.</p> <p>21 A. So I'm not aware of anything else.</p> <p>22 Q. Do you know what the milestones</p> <p>23 were?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 67</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know anything about -- do you</p> <p>3 know what promissory notes the agreement</p> <p>4 covered?</p> <p>5 A. I don't.</p> <p>6 Q. Do you know if -- if Jim and Nancy</p> <p>7 Dondero entered into one agreement or more than</p> <p>8 one agreement?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know if the agreement is in</p> <p>13 writing?</p> <p>14 A. I don't know.</p> <p>15 Q. How did you learn of the existence</p> <p>16 of the agreement?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 Again --</p> <p>19 A. I don't -- I don't recall who told</p> <p>20 me.</p> <p>21 Q. You have no recollection of who told</p> <p>22 you about this agreement between Jim and Nancy</p> <p>23 Dondero?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p style="text-align: right;">Page 68</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall how you learned of the</p> <p>4 agreement?</p> <p>5 Was it in a meeting? Was it in a</p> <p>6 phone call? Was it in an email?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you recall when you learned of</p> <p>9 the agreement?</p> <p>10 A. Not specifically.</p> <p>11 Q. Do you recall what year you learned</p> <p>12 of the agreement?</p> <p>13 A. In -- look, I mean, there are so</p> <p>14 many notes. I may be getting -- I believe it</p> <p>15 was 2020.</p> <p>16 Q. All right. I'm not asking about</p> <p>17 notes, sir. I'm asking about the agreement</p> <p>18 that you testified you knew about between Jim</p> <p>19 and Don- -- Nancy Dondero. Okay.</p> <p>20 Do you understand my question now?</p> <p>21 Should I ask my question again?</p> <p>22 A. Yeah, sure. Go ahead.</p> <p>23 Q. I'm going to use the word</p> <p>24 "agreement" to refer to the agreement that</p> <p>25 Mr. Dondero and Nancy Dondero entered into</p>	<p style="text-align: right;">Page 69</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 where you understood that certain milestones</p> <p>3 had to be reached. Okay?</p> <p>4 A. Uh-huh.</p> <p>5 MS. DANDENEAU: Objection.</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 MR. MORRIS: Just defining a term,</p> <p>9 what is the objection.</p> <p>10 MS. DEITSCH-PEREZ: The objection --</p> <p>11 MR. MORRIS: I will move on. I will</p> <p>12 move on.</p> <p>13 MS. DEITSCH-PEREZ: John --</p> <p>14 Q. Sir, are you okay with that</p> <p>15 definition of agreement?</p> <p>16 A. Okay.</p> <p>17 Q. Okay. So you don't recall who --</p> <p>18 who informed you of the existence of the</p> <p>19 agreement; is that right?</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall who told you the</p> <p>22 terms of the agreement.</p> <p>23 Do I have that right?</p> <p>24 A. Correct.</p> <p>25 Q. And you don't recall if you learned</p>

<p style="text-align: right;">Page 70</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 about the agreement in a meeting, through an</p> <p>3 email, or through a phone call.</p> <p>4 Do I have that right?</p> <p>5 A. I don't recall.</p> <p>6 Q. Can you tell me when you learned of</p> <p>7 the agreement?</p> <p>8 A. I don't -- I don't -- I don't</p> <p>9 remember specifically.</p> <p>10 Q. Can you tell me if you learned of</p> <p>11 the agreement before or after the petition</p> <p>12 date?</p> <p>13 A. It would have been -- it would have</p> <p>14 been after.</p> <p>15 Q. Can you tell me if you learned of</p> <p>16 the agreement before or after January 9th,</p> <p>17 2020?</p> <p>18 A. It would have been after.</p> <p>19 Q. Can you tell me if you learned of</p> <p>20 the agreement before or after you left Highland</p> <p>21 Capital Management in February of 2021?</p> <p>22 A. I don't -- I don't -- I don't know.</p> <p>23 Q. It is possible that you learned of</p> <p>24 it while you were a Highland employee.</p> <p>25 Do I have that right?</p>	<p style="text-align: right;">Page 71</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't remember the -- I mean, it</p> <p>3 was sometime in 2021. I don't remember when.</p> <p>4 Q. All right. So to the best of your</p> <p>5 recollection, it was in 2021 but you don't</p> <p>6 recall if it was before or after you ceased to</p> <p>7 be a Highland employee.</p> <p>8 Do I have that right?</p> <p>9 A. Yeah, I mean, it was -- it was</p> <p>10 likely after I was -- after I left Highland</p> <p>11 because, if I put myself back into the last</p> <p>12 days of -- of 2021, it was -- you know, the</p> <p>13 communications with Mr. Dondero were -- were --</p> <p>14 were -- there weren't as many communications</p> <p>15 because of the circumstances.</p> <p>16 Q. And so based on that you believe</p> <p>17 that it is most likely that you learned of this</p> <p>18 agreement sometime after you left Highland</p> <p>19 employment?</p> <p>20 A. I wouldn't use the term "most</p> <p>21 likely." I don't recall specifically. I don't</p> <p>22 recall.</p> <p>23 Q. Do you recall ever telling Jim Seery</p> <p>24 about this agreement?</p> <p>25 A. No, I don't -- I didn't tell</p>
<p style="text-align: right;">Page 72</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Jim Seery.</p> <p>3 Q. Did you tell anybody at DSI about</p> <p>4 this agreement?</p> <p>5 A. No.</p> <p>6 Q. Did you tell any of Highland's</p> <p>7 independent directors about this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you tell anybody at Pachulski</p> <p>10 Stang Ziehl &amp; Jones about this agreement?</p> <p>11 A. No.</p> <p>12 Q. Did you tell any employee of</p> <p>13 Highland about this agreement?</p> <p>14 A. No.</p> <p>15 MS. DANDENEAU: Mr. Morris, it has</p> <p>16 been an hour and a half. Is this a good</p> <p>17 time for a break?</p> <p>18 MR. MORRIS: Sure.</p> <p>19 Q. Mr. Waterhouse, I will just remind</p> <p>20 you that during the break please don't speak</p> <p>21 with anybody about the deposition, the</p> <p>22 substance of your testimony or anything else</p> <p>23 concerning the deposition. Okay?</p> <p>24 A. Yes.</p> <p>25 MR. MORRIS: So it is 11:02. We're</p>	<p style="text-align: right;">Page 73</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 at 11:02 your time. Let's come back, I</p> <p>3 guess, at 15 -- at 11:15 your time.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record at 11:02 a.m.</p> <p>6 (Recess taken 11:02 a.m. to 11:20 a.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 11:20 a.m.</p> <p>9 Q. Mr. Waterhouse, did you speak with</p> <p>10 anybody during the break about this deposition?</p> <p>11 A. No.</p> <p>12 MS. DANDENEAU: Other than -- other</p> <p>13 than his counsel.</p> <p>14 Q. Did you speak to your counsel about</p> <p>15 the substance of your deposition today?</p> <p>16 A. No, I didn't bring it up.</p> <p>17 Q. I didn't ask you if you brought it</p> <p>18 up. I asked you if you had any conversation</p> <p>19 with your lawyer about the substance of your</p> <p>20 deposition.</p> <p>21 MS. DANDENEAU: Yes, he did.</p> <p>22 Q. Can you tell me what the -- you</p> <p>23 discussed?</p> <p>24 MS. DANDENEAU: No, I object to</p> <p>25 that. He's not going to answer. That is a</p>



<p style="text-align: right;">Page 74</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 privileged conversation.</p> <p>3 MR. MORRIS: So I just want to make</p> <p>4 sure that I understand. During the break</p> <p>5 you spoke with your client about the</p> <p>6 substance of this deposition; is that</p> <p>7 right?</p> <p>8 MS. DANDENEAU: Yes, John.</p> <p>9 MR. MORRIS: And you refuse -- you</p> <p>10 refuse to let your client tell me what was</p> <p>11 discussed; is that right?</p> <p>12 MS. DANDENEAU: That's correct.</p> <p>13 MR. MORRIS: You know, I had given</p> <p>14 the instruction prior to the break not to</p> <p>15 speak with counsel. I would have</p> <p>16 appreciated --</p> <p>17 MS. DANDENEAU: No, you didn't --</p> <p>18 actually, that is not true, Mr. Morris.</p> <p>19 You said not to speak with anyone. We</p> <p>20 never have interpreted that to mean</p> <p>21 conversations with counsel. That's never</p> <p>22 been -- I have never, ever heard that</p> <p>23 instruction.</p> <p>24 MR. MORRIS: Okay. We will -- we</p> <p>25 will -- we will deal with it when and if we</p>	<p style="text-align: right;">Page 75</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have to.</p> <p>3 Q. Mr. Waterhouse, after learning about</p> <p>4 the agreement, did you ask anybody if the</p> <p>5 agreement was reflected in a writing?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. No.</p> <p>8 Q. Did you ask anybody if the terms of</p> <p>9 the agreement were memorialized anywhere?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: What is the --</p> <p>12 A. No.</p> <p>13 MS. DANDENEAU: Well, because you</p> <p>14 keep talking about this agreement and I --</p> <p>15 I -- I think, Mr. Morris, that is really</p> <p>16 not clear what you mean by "the agreement."</p> <p>17 And maybe you can just go back and restate</p> <p>18 what that is.</p> <p>19 MR. MORRIS: Okay. Your client has</p> <p>20 agreed with me twice on the definition, but</p> <p>21 I will try one more time.</p> <p>22 Q. Mr. Waterhouse, do you understand</p> <p>23 that when I use the term "agreement," I'm</p> <p>24 referring to the agreement between Jim and</p> <p>25 Nancy Dondero concerning certain promissory</p>
<p style="text-align: right;">Page 76</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes where you learned that one of the terms</p> <p>3 of the agreement was milestones reached?</p> <p>4 A. Okay.</p> <p>5 Q. And did you understand that that was</p> <p>6 the -- the agreement that we were referring to</p> <p>7 every time we used the word "agreement" in this</p> <p>8 deposition?</p> <p>9 A. I don't know anything about this</p> <p>10 agreement. So, look, I do -- it -- I don't</p> <p>11 know whether --</p> <p>12 Q. Let's -- let's try this again.</p> <p>13 A. Yeah. Look, I don't know what this</p> <p>14 agreement relates.</p> <p>15 MS. DEITSCH-PEREZ: John, John --</p> <p>16 Q. Let me try --</p> <p>17 MS. DEITSCH-PEREZ: John, please let</p> <p>18 the witness finish.</p> <p>19 MR. MORRIS: Please stop. Please</p> <p>20 stop. Please stop talking.</p> <p>21 MS. DEITSCH-PEREZ: No, you stop.</p> <p>22 Let the witness --</p> <p>23 MR. MORRIS: Stop talking.</p> <p>24 MS. DEITSCH-PEREZ: -- finish -- you</p> <p>25 interrupted him.</p>	<p style="text-align: right;">Page 77</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: You know what, you</p> <p>3 guys, this is really wrong. It is really,</p> <p>4 really wrong. Okay?</p> <p>5 I had the witness agree not once,</p> <p>6 but twice to the definition of agreement.</p> <p>7 Okay? I'm going to try and do it a third</p> <p>8 time.</p> <p>9 MS. DANDENEAU: No, but, please,</p> <p>10 John, really --</p> <p>11 MR. MORRIS: No, please stop</p> <p>12 talking. Please. It is my deposition.</p> <p>13 Object to questions.</p> <p>14 MS. DANDENEAU: No, but also you</p> <p>15 instructed him that -- that if you were</p> <p>16 going -- if you were interrupting him, that</p> <p>17 he should remind you that you're</p> <p>18 interrupting him and -- and --</p> <p>19 MR. MORRIS: Let him do that. Let</p> <p>20 him do that.</p> <p>21 MS. DANDENEAU: Okay. Well, you --</p> <p>22 MR. MORRIS: Please stop talking.</p> <p>23 A. Okay. I don't know any of the</p> <p>24 details of these agreements. I don't know</p> <p>25 anything about them. I heard -- someone -- I</p>

<p style="text-align: right;">Page 78</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know who, I don't know when, as you</p> <p>3 asked, sometime in '21, someone told me about</p> <p>4 this -- or I don't honestly know -- I don't</p> <p>5 even recall exactly how I was made aware of</p> <p>6 this, but I was. I don't know -- I don't know</p> <p>7 any of these details, and I'm getting -- again,</p> <p>8 there is, you know, I -- I -- I had a passing</p> <p>9 conversation with -- with Jim at some point</p> <p>10 on -- on some -- on the executive comp, and I'm</p> <p>11 getting confused of what is what, because</p> <p>12 again, I don't know any of these details.</p> <p>13 Q. Okay. Let me try again,</p> <p>14 Mr. Waterhouse, and I apologize.</p> <p>15 Are you aware of any agreement</p> <p>16 between Jim Dondero and Nancy Dondero</p> <p>17 concerning any promissory note that was given</p> <p>18 to Highland by any affiliate or Mr. Dondero?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I've heard of an agreement. That</p> <p>22 is -- that is -- I mean, if you are using aware</p> <p>23 as heard, sure.</p> <p>24 Q. And you understand that one of the</p> <p>25 terms of the agreement is that it was based on</p>	<p style="text-align: right;">Page 79</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 milestones that had to be reached; is that</p> <p>3 right?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. That was one of the words that was</p> <p>6 used when I heard about it, yes.</p> <p>7 Q. And when you heard about this</p> <p>8 agreement that had a term in it concerning</p> <p>9 milestones reached, did you ask the person who</p> <p>10 was telling you about the agreement whether or</p> <p>11 not it was in writing?</p> <p>12 A. I did not.</p> <p>13 Q. Did you ask any questions at all?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. Not that I recall.</p> <p>16 Q. But do you understand that going</p> <p>17 forward, we're going to refer to the agreement</p> <p>18 as the agreement that you just described that</p> <p>19 you were --</p> <p>20 MS. DANDENEAU: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You don't have any personal</p> <p>23 knowledge concerning the terms of the</p> <p>24 agreement; correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 80</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 Q. You can answer.</p> <p>4 A. I don't -- I heard about the</p> <p>5 agreement. I don't know anything -- I heard</p> <p>6 there was an agreement. That is -- again, as I</p> <p>7 testified before -- I said before, heard about</p> <p>8 it, don't know the details. I believe it was</p> <p>9 sometime this year.</p> <p>10 Q. Do you have any personal knowledge</p> <p>11 about the terms of the agreement, sir?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. Other than what I have previously</p> <p>14 discussed, I don't -- I don't know.</p> <p>15 Q. Did -- did Mr. Dondero tell you</p> <p>16 about the existence of the agreement?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you recall the source of your</p> <p>19 information when you learned about the</p> <p>20 agreement?</p> <p>21 A. No, I don't -- I don't recall. I</p> <p>22 don't remember. I just -- I heard about it</p> <p>23 generally. I don't remember -- I don't</p> <p>24 remember who, how, if, how. I don't remember.</p> <p>25 Q. You know, Mr. Waterhouse, I just</p>	<p style="text-align: right;">Page 81</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 want to be clear that I never would have asked</p> <p>3 you to appear at this deposition if your name</p> <p>4 hadn't been included in responses to discovery</p> <p>5 as to somebody with knowledge about the -- who</p> <p>6 was told about the existence of the agreement.</p> <p>7 That is what prompted me do this,</p> <p>8 and I really do feel compelled to tell you that</p> <p>9 I otherwise would never have called you as a</p> <p>10 witness. So I regret that you're being put</p> <p>11 through this today. I had no intention of</p> <p>12 burdening you or taking your time, but that is</p> <p>13 the reason that we issued the subpoena is</p> <p>14 because certain of the defendants identified</p> <p>15 you as somebody --</p> <p>16 MS. DEITSCH-PEREZ: Mr. Morris, you</p> <p>17 are here to ask questions, not to have --</p> <p>18 MR. MORRIS: I feel badly for the</p> <p>19 guy. I really do.</p> <p>20 MS. DEITSCH-PEREZ: I'm sure you do.</p> <p>21 MR. MORRIS: I do. Stop.</p> <p>22 MS. DEITSCH-PEREZ: You stop.</p> <p>23 MR. MORRIS: I'm allowed.</p> <p>24 MS. DEITSCH-PEREZ: No, you're not</p> <p>25 allowed to have a chat with the witness.</p>



<p style="text-align: right;">Page 82</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Well, I hope that you</p> <p>3 appreciate what I'm saying here,</p> <p>4 Mr. Waterhouse.</p> <p>5 MS. DANDENEAU: All right. Let's go</p> <p>6 ahead and ask questions, and again, you're</p> <p>7 entitled to probe his -- his knowledge</p> <p>8 of -- whatever knowledge he has about</p> <p>9 this -- this agreement and --</p> <p>10 MR. MORRIS: That is what I'm doing.</p> <p>11 MS. DANDENEAU: -- he will answer</p> <p>12 the questions to the best that he can.</p> <p>13 MR. MORRIS: That is what I'm doing.</p> <p>14 Q. Mr. Waterhouse, I take it you do not</p> <p>15 know which promissory notes issued by which</p> <p>16 affiliates or Mr. Dondero are the subject of</p> <p>17 this agreement; do I have that right?</p> <p>18 A. Yes, I don't -- I don't know.</p> <p>19 Q. Do you know of any way to determine</p> <p>20 which promissory notes issued by the affiliates</p> <p>21 and Mr. Dondero are the subject of this</p> <p>22 agreement other than asking Jim or Nancy</p> <p>23 Dondero?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 83</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever make --</p> <p>3 A. I don't know anything about these</p> <p>4 agreements.</p> <p>5 Q. Did you ever make any effort to</p> <p>6 determine which promissory notes are subject to</p> <p>7 this agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you ever ask anybody which</p> <p>10 promissory notes are subject to this agreement?</p> <p>11 A. No.</p> <p>12 Q. Do you know if there is a list</p> <p>13 anywhere of the promissory notes that are</p> <p>14 subject to this agreement?</p> <p>15 A. I'm not aware.</p> <p>16 Q. Have you ever seen the terms of the</p> <p>17 agreement written down anywhere?</p> <p>18 A. No.</p> <p>19 Q. Have you ever asked anybody whether</p> <p>20 the terms of the agreement were written down</p> <p>21 anywhere?</p> <p>22 A. I have not.</p> <p>23 Q. Did learning about the agreement</p> <p>24 cause you to do anything in response?</p> <p>25 MS. DANDENEAU: Objection to form.</p>
<p style="text-align: right;">Page 84</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did anybody ever describe to you the</p> <p>4 nature of the milestones that you referred to</p> <p>5 earlier?</p> <p>6 A. No, I don't -- I don't have any</p> <p>7 details of this.</p> <p>8 Q. That is fine.</p> <p>9 PricewaterhouseCoopers served as</p> <p>10 Highland's outside auditors prior to the</p> <p>11 petition date; correct?</p> <p>12 A. Yes.</p> <p>13 Q. You refer to PricewaterhouseCoopers</p> <p>14 as PwC?</p> <p>15 A. Yes.</p> <p>16 Q. PricewaterhouseCoopers audited</p> <p>17 Highland's financial statements on an annual</p> <p>18 basis; correct?</p> <p>19 A. During my -- during my time as -- as</p> <p>20 CFO, yes, PricewaterhouseCoopers was the</p> <p>21 auditor.</p> <p>22 Q. Do you know why Highland had its</p> <p>23 annual financial statements audited each year?</p> <p>24 A. Generally.</p> <p>25 Q. Tell me your general understanding</p>	<p style="text-align: right;">Page 85</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 as to the reason why Highland had its annual</p> <p>3 financial statements audited each year.</p> <p>4 A. From -- from time to time, they were</p> <p>5 used -- or asked for, as part of diligence or</p> <p>6 transactions or -- or things of that nature.</p> <p>7 Q. And were they given to third parties</p> <p>8 for purposes of diligence or transactions from</p> <p>9 time to time?</p> <p>10 A. As far as I'm aware, yes.</p> <p>11 Q. And was it your understanding as the</p> <p>12 CFO that the third parties who received the</p> <p>13 financial statements in diligence or</p> <p>14 transactions was going to rely on those?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't know -- I don't know gen --</p> <p>17 I don't know specifically what they were going</p> <p>18 to rely on. You know, we would get requests</p> <p>19 for audited financial statements. I don't know</p> <p>20 what they were relying on.</p> <p>21 Q. And --</p> <p>22 A. You would have to ask them.</p> <p>23 Q. Did you personally play a role in</p> <p>24 PwC's annual audit and the conduct of the</p> <p>25 audit?</p>

<p style="text-align: right;">Page 86</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. During my tenure as CFO, I played a</p> <p>4 very minimal role.</p> <p>5 Q. What was the minimal role that you</p> <p>6 played?</p> <p>7 A. You know, again, it was -- it was to</p> <p>8 check in with the team, to make sure that, you</p> <p>9 know, audit -- the deadlines were being hit,</p> <p>10 information was being presented to the auditors</p> <p>11 in a -- in a timely fashion, but, you know,</p> <p>12 other than that, it was a very capable team</p> <p>13 that are still current employees of Highland</p> <p>14 and, you know, they -- they conducted 99</p> <p>15 percent of -- look, I don't want to give</p> <p>16 percentages. I mean, this is -- but I -- I --</p> <p>17 I played a minimal role towards the end.</p> <p>18 Before during my earlier years as</p> <p>19 CFO, I did more, and then as time went on, I</p> <p>20 did less in it.</p> <p>21 Q. Okay. Was there a person at</p> <p>22 Highland who was responsible for overseeing</p> <p>23 Highland's participation in PwC's audit during</p> <p>24 the time that you were the CFO?</p> <p>25 A. Yeah. I mean, there was -- there</p>	<p style="text-align: right;">Page 87</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 was a -- there was a point -- it varies. It</p> <p>3 varies by year, in function, in time and, you</p> <p>4 know, depending on the request, but yes, I</p> <p>5 mean, there is -- there is -- there is</p> <p>6 generally a point person of communication.</p> <p>7 Q. And who was the point person from</p> <p>8 2016 until the time you left Highland?</p> <p>9 A. I don't -- I don't know</p> <p>10 specifically, but it would have been, you</p> <p>11 know -- you know, someone on the corporate</p> <p>12 accounting team.</p> <p>13 Q. And was there a head of the</p> <p>14 corporate accounting team?</p> <p>15 A. Yes, so -- yes.</p> <p>16 Q. Who was the head of corporate</p> <p>17 accounting for the five years prior to the time</p> <p>18 you left Highland?</p> <p>19 A. I don't -- if you're asking from</p> <p>20 2016 on, I don't -- it was Dave Klos, but,</p> <p>21 again, there was -- there was changes to the</p> <p>22 team and the reporting structure. I don't</p> <p>23 remember exactly when that happened during --</p> <p>24 you know, over the last -- since 2016.</p> <p>25 Q. Did the folks who participated and</p>
<p style="text-align: right;">Page 88</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 ran the audit all report to you, directly or</p> <p>3 indirectly?</p> <p>4 A. Yes.</p> <p>5 Q. And did you have any responsibility</p> <p>6 for making sure that the audit report was</p> <p>7 accurate before it was finalized?</p> <p>8 A. Yeah. I mean, you know, that --</p> <p>9 that is -- my responsibility to the auditors</p> <p>10 was -- again, is -- and the CFO is to -- we are</p> <p>11 providing accurate financial statements; right?</p> <p>12 And -- and -- and as part of any</p> <p>13 audit, we disclose all relevant information as</p> <p>14 part of any audit.</p> <p>15 Q. Okay. And as the CFO, did you take</p> <p>16 steps to make sure that the audit report was</p> <p>17 accurate?</p> <p>18 A. I mean, I would say in a general</p> <p>19 sense, yes. But, again, I mean, I had a</p> <p>20 very -- I had a very capable and competent</p> <p>21 team. I wasn't managing them.</p> <p>22 You know, part of what I do is I let</p> <p>23 the team -- I want managers to grow. I want</p> <p>24 managers to have rope. And that is -- you</p> <p>25 know, I'm not a stand-behind-you type of guy.</p>	<p style="text-align: right;">Page 89</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 If you -- if you talk to my team members, I'm</p> <p>3 not micromanaging people. I want people to</p> <p>4 learn and grow in their function so they can go</p> <p>5 on and do bigger and better things with their</p> <p>6 careers.</p> <p>7 And so, yes, generally I was</p> <p>8 responsible for it, but I wanted the team to</p> <p>9 learn and grow and be responsible for the bulk</p> <p>10 of the audit.</p> <p>11 Q. Did you personally review each audit</p> <p>12 report before it was finalized to satisfy</p> <p>13 yourself that it was accurate?</p> <p>14 A. I don't -- I don't recall, you know,</p> <p>15 for every single -- we're talking 2016, there</p> <p>16 would have been three years, 2016 to '17, '18.</p> <p>17 I don't -- we're -- we're going back</p> <p>18 five years-plus. I don't -- you know, I don't</p> <p>19 recall.</p> <p>20 Q. Did you have a practice that you</p> <p>21 employed to make sure that you were satisfied</p> <p>22 that Highland's audit reports were true and</p> <p>23 accurate to the best of your knowledge?</p> <p>24 A. I mean, our -- the practice was set</p> <p>25 up with our -- the -- the practice to put</p>

<p style="text-align: right;">Page 90</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 together accurate audited or accurate financial</p> <p>3 statements is to your control environment.</p> <p>4 So, you know, the -- so the practice</p> <p>5 was to maintain a stable control environment</p> <p>6 which then the output is -- is accurate</p> <p>7 financial statements.</p> <p>8 So -- so, you know, if I was</p> <p>9 comfortable that the control environment was</p> <p>10 operating, then, you know, that would dictate</p> <p>11 how I would -- you know, what I might or might</p> <p>12 not do in a given year.</p> <p>13 Q. Okay. Do you recall ever being</p> <p>14 uncomfortable with the control environment</p> <p>15 during the period that you served as CFO?</p> <p>16 A. Yeah. I mean, look, yes, there are</p> <p>17 times -- you know, nothing is perfect. So</p> <p>18 there were -- there were times when, yes, you</p> <p>19 know -- there are times I learned I was</p> <p>20 uncomfortable with the control environment, and</p> <p>21 that is part of the management of the process</p> <p>22 and having, you know -- and -- and working</p> <p>23 through whatever obstacles present themselves.</p> <p>24 Q. Okay. Were you ever uncomfortable</p> <p>25 with the control process as it related to</p>	<p style="text-align: right;">Page 91</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reporting and disclosures of loans to</p> <p>3 affiliates and Mr. Dondero?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. I don't -- I don't recall --</p> <p>6 Q. So you don't recall --</p> <p>7 A. -- the --</p> <p>8 MS. DANDENEAU: Mr. Morris --</p> <p>9 A. I don't recall being uncomfortable.</p> <p>10 But, again, we're going back several years. I</p> <p>11 don't -- you know, the practice in an audit is</p> <p>12 to disclose all information to the auditors.</p> <p>13 And I don't -- I don't recall.</p> <p>14 Q. As part of the process of the audit,</p> <p>15 did you sign what is sometimes referred to as a</p> <p>16 management representation letter?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: Can we put up on the</p> <p>19 screen a document that we have premarked as</p> <p>20 Exhibit 33.</p> <p>21 (Exhibit 33 marked.)</p> <p>22 MS. DANDENEAU: Mr. Morris, that is</p> <p>23 not in the binder; correct?</p> <p>24 MR. MORRIS: Correct.</p> <p>25 Q. So you will see, Mr. Waterhouse,</p>
<p style="text-align: right;">Page 92</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is a letter dated June 3rd. And if we</p> <p>3 could go to the signature page.</p> <p>4 And do you see that you and</p> <p>5 Mr. Dondero signed this document?</p> <p>6 A. Yes.</p> <p>7 Q. That is your signature; right?</p> <p>8 A. Yes.</p> <p>9 MR. MORRIS: Okay. Can you go back</p> <p>10 to the top.</p> <p>11 MS. DANDENEAU: Mr. Morris, can you</p> <p>12 have somebody post this in the chat so that</p> <p>13 we have can have a copy of this, please.</p> <p>14 MR. MORRIS: Yeah, sure. Asia, can</p> <p>15 you do that, please.</p> <p>16 Q. Okay. Do you see at the bottom of</p> <p>17 the second paragraph there is a reference to</p> <p>18 materiality?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. It says, Materiality used for</p> <p>21 purposes of these representations is</p> <p>22 \$1.7 million.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And did PwC set that level of</p>	<p style="text-align: right;">Page 93</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality?</p> <p>3 A. Yes.</p> <p>4 Q. And for purposes of the audit, did</p> <p>5 PwC set the level of materiality each year?</p> <p>6 A. Yes.</p> <p>7 Q. Did that number change over time?</p> <p>8 A. I'm not aware of what materiality is</p> <p>9 every single year, so -- but, you know, this</p> <p>10 number would likely fluctuate.</p> <p>11 Q. Okay. I'm going to go back to a</p> <p>12 question I asked you earlier today. And that</p> <p>13 is in connection -- this letter is issued in</p> <p>14 connection with the audit for the period ending</p> <p>15 12/31/2018; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And is it fair to say that if</p> <p>18 any -- actually, withdrawn. I'm going to take</p> <p>19 it outside of this.</p> <p>20 If Highland ever forgave the loan to</p> <p>21 any affiliate or any of its officers or</p> <p>22 employees, in whole or in part, to the best of</p> <p>23 your knowledge, would that forgiveness have</p> <p>24 been disclosed in the audited financial</p> <p>25 statements if it exceeded the level of</p>

<p style="text-align: right;">Page 94</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 materiality that PwC established?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. So, again, during my tenure as CFO,</p> <p>5 and -- Highland -- it was -- it is required to</p> <p>6 disclose any affiliate loans that are in excess</p> <p>7 of materiality.</p> <p>8 Now, the forgiveness of those loans</p> <p>9 may or may not -- I mean, since materiality</p> <p>10 fluctuates every year, a -- you know, if a loan</p> <p>11 was forgiven, it may or may not, you know --</p> <p>12 and, look, I would want to consult the guidance</p> <p>13 around this.</p> <p>14 It is not something we do -- you</p> <p>15 know, it is not -- you know, GAAP can be and</p> <p>16 disclosures can be very specialized so, again,</p> <p>17 we want to consult the guidance. But we would</p> <p>18 see if and what would need to be disclosed if</p> <p>19 it were deemed immaterial.</p> <p>20 Q. Did you and Mr. Dondero sign</p> <p>21 management representation letters of this type</p> <p>22 in each year in which you served as Highland's</p> <p>23 CFO?</p> <p>24 A. I -- I -- I will speak for myself.</p> <p>25 I signed them. There may have been others that</p>	<p style="text-align: right;">Page 95</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 signed as well. I don't -- I don't recall.</p> <p>3 Q. But to the best of your knowledge,</p> <p>4 you, personally, signed a management</p> <p>5 representation letter in connection with</p> <p>6 Highland's audit each year that you served as</p> <p>7 the CFO; correct?</p> <p>8 A. I would say generally speaking,</p> <p>9 Mr. Morris. I don't recall for every single</p> <p>10 year, you know, generally, but I would want to</p> <p>11 refer to all the rep letters and see who signed</p> <p>12 them.</p> <p>13 Q. Do you recall Highland having its</p> <p>14 financial statements audited in any year during</p> <p>15 the period that you were a CFO where you didn't</p> <p>16 sign the management representation letter?</p> <p>17 A. I don't recall. But, John, we're</p> <p>18 going back five, six, seven, eight, nine,</p> <p>19 decade. I don't -- I don't remember.</p> <p>20 Q. I don't want to go back that many</p> <p>21 decades, but I'm just asking you if you recall</p> <p>22 that there was you didn't sign it?</p> <p>23 A. I -- I -- I don't, but my memory</p> <p>24 is -- again, I -- I -- I can't tell you what I</p> <p>25 did in 2012. I mean, I think generally, yes,</p>
<p style="text-align: right;">Page 96</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 but I don't -- I don't know for sure, and I</p> <p>3 would want to rely on the document.</p> <p>4 Q. Let me ask the question a little bit</p> <p>5 differently then.</p> <p>6 Do you have any reason to believe</p> <p>7 that Highland had its annual financial audit</p> <p>8 and you did not sign a management</p> <p>9 representation letter in connection with that</p> <p>10 audit?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't believe it would, but,</p> <p>13 again, I would want to -- I don't recall and I</p> <p>14 would want to confirm it to -- to make, you</p> <p>15 know, an affirmative -- to give an affirmative</p> <p>16 answer.</p> <p>17 Q. Do you know whether PwC required</p> <p>18 management to sign management representation</p> <p>19 letters?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes. I mean, it -- management</p> <p>22 representation letters are signed by</p> <p>23 management.</p> <p>24 Q. Okay. And do you know -- do you</p> <p>25 have any understanding as to why PwC requires</p>	<p style="text-align: right;">Page 97</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 management to sign management representation</p> <p>3 letters?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't know why PwC's -- what PwC's</p> <p>7 specific practice is. I know generally what</p> <p>8 management representation letters are.</p> <p>9 Q. Okay. Do you personally -- I'm not</p> <p>10 asking about PwC. I'm asking for you -- I'm</p> <p>11 asking about you, do you have an understanding</p> <p>12 as to why the auditor asks for management</p> <p>13 representation letters?</p> <p>14 A. Okay. So you're asking me in my</p> <p>15 personal capacity, yes, I have a general</p> <p>16 understanding of why.</p> <p>17 Q. Can you give me the general</p> <p>18 understanding that you have as to why</p> <p>19 management representation letters are required?</p> <p>20 A. They are -- they are required to --</p> <p>21 they are -- they are one of the items required</p> <p>22 in an audit to help verify completeness.</p> <p>23 Q. Do you have any -- any other</p> <p>24 understanding as to why management</p> <p>25 representation letters are required?</p>

<p style="text-align: right;">Page 98</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That is -- that is -- other than</p> <p>3 what I said, it is -- it is -- it is required</p> <p>4 so -- to ensure that the -- you know, there</p> <p>5 is -- there is completeness in what is being</p> <p>6 audited.</p> <p>7 Q. Did you -- did you have a practice</p> <p>8 whereby you and Mr. Dondero conferred about the</p> <p>9 management representation letters before you</p> <p>10 signed them?</p> <p>11 A. No.</p> <p>12 Q. Did you have a practice --</p> <p>13 withdrawn.</p> <p>14 Do you see just the next sentence</p> <p>15 after the materiality, there is a sentence that</p> <p>16 states: We confirm, to the best of our</p> <p>17 knowledge and belief, as of June 3rd, 2019, the</p> <p>18 date of your report, the following</p> <p>19 representations made to you during your audit.</p> <p>20 Do you see that sentence?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did you understand when you</p> <p>23 signed this letter that you were confirming the</p> <p>24 representations that followed?</p> <p>25 A. When I signed this management</p>	<p style="text-align: right;">Page 99</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 letter -- representation letter, yes.</p> <p>3 Q. Okay. Did you discuss this letter</p> <p>4 with Mr. Dondero before you signed it?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall if Mr. Dondero asked</p> <p>7 you any questions before he signed the letter?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall if you asked</p> <p>10 Mr. Dondero any questions before you signed</p> <p>11 this letter?</p> <p>12 A. I don't recall.</p> <p>13 Q. Is it fair to say that Mr. Dondero</p> <p>14 did not disclose to you the existence of the</p> <p>15 agreement that we have -- as we've defined that</p> <p>16 term prior to the time you signed this letter?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I don't think I understand the</p> <p>19 question. So, again, you are saying, did</p> <p>20 Mr. Dondero not disclose to me the existence of</p> <p>21 this letter?</p> <p>22 Q. No, I apologize.</p> <p>23 Did Mr. Dondero disclose to you the</p> <p>24 existence of the agreement prior to the time</p> <p>25 you signed this letter on June 3rd, 2019?</p>
<p style="text-align: right;">Page 100</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The agreement -- the agreement that</p> <p>3 we talked about earlier?</p> <p>4 Q. Correct.</p> <p>5 A. Look, as I said earlier, the first</p> <p>6 time I heard of this agreement was sometime</p> <p>7 this year.</p> <p>8 Q. Okay. Can we turn -- let's just</p> <p>9 look at a couple of items on the list. If we</p> <p>10 can go to page 33416. Do you see in Number 35</p> <p>11 it talks about the proper recording or</p> <p>12 disclosure in the financial statements of ND</p> <p>13 relationships and transactions with related</p> <p>14 parties.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. As the CFO, do you have any</p> <p>18 understanding as to whether Dugaboy is a</p> <p>19 related party?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know whether any of the</p> <p>22 affiliates are related parties?</p> <p>23 A. If -- if it was NexPoint, HCMFA,</p> <p>24 HCMS, HCRE, yeah, if -- if that is the</p> <p>25 affiliate definition, and there. In ASC 850 --</p>	<p style="text-align: right;">Page 101</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 again, I mean, I haven't looked at ASC 850 in</p> <p>3 quite some time, but, you know, if -- if there</p> <p>4 is a control language, you know, ASC 850, would</p> <p>5 that -- that section in GAAP would -- would</p> <p>6 pick up and define what are related parties.</p> <p>7 So, you know, like I said, if -- one</p> <p>8 of the four entities I just described, if -- if</p> <p>9 they are in that control definition of ASC 850,</p> <p>10 they would be picked up in 35D.</p> <p>11 Q. Do you -- do you have any reason to</p> <p>12 believe that they would be picked up in that</p> <p>13 definition, based on your knowledge and</p> <p>14 experience?</p> <p>15 A. I -- I believe that entities</p> <p>16 controlled under GAAP are -- are affiliates.</p> <p>17 Q. Okay. Would Mr. Dondero also</p> <p>18 qualify as a related party for purposes of</p> <p>19 Section 35D, to the best of your knowledge?</p> <p>20 A. Yeah, I don't -- I don't know. I</p> <p>21 would think -- I would have to read the code</p> <p>22 section to see if someone personally -- is it</p> <p>23 talking about related parties. So, look, if</p> <p>24 your own in control, yeah, I mean, I would have</p> <p>25 to read the section.</p>



<p style="text-align: right;">Page 102</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. To the best of your knowledge, was</p> <p>3 the existence of the agreement ever disclosed</p> <p>4 to PwC?</p> <p>5 A. I'm not -- I'm not aware.</p> <p>6 Q. Do you recall if the agreement was</p> <p>7 ever disclosed in Highland's audited financial</p> <p>8 statements?</p> <p>9 A. I don't -- I don't remember if it</p> <p>10 was in every Highland's audited financial</p> <p>11 statements during my tenure. We would have to</p> <p>12 read the financial statements to see what was</p> <p>13 disclosed, but I'm not -- I mean, as I sit here</p> <p>14 today, I'm not aware.</p> <p>15 Q. That is all I'm asking for.</p> <p>16 A. I'm not aware.</p> <p>17 Q. Can we go to the next page, please,</p> <p>18 and look at 36. 36 says, we have disclosed to</p> <p>19 you the identity of the partnership's related</p> <p>20 party relationships and all the related party</p> <p>21 relationships and transactions of which we are</p> <p>22 aware.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. To the best of your knowledge, as of</p>	<p style="text-align: right;">Page 103</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd, 2019, did Highland disclose to PwC</p> <p>3 the identity of the partnership's related</p> <p>4 parties and all the related party relationships</p> <p>5 and transactions of which it was aware?</p> <p>6 A. I mean, I can speak for myself as</p> <p>7 signer of this representation letter. I</p> <p>8 disclosed what -- what, you know, what --</p> <p>9 what -- what I knew. Sorry, look, yes, so I --</p> <p>10 I disclosed what I knew.</p> <p>11 Q. Okay. Can we go to page 419. Do</p> <p>12 you see at the end there is a reference to</p> <p>13 events that occurred since the end of the</p> <p>14 fiscal year and the date of the letter?</p> <p>15 A. Yes.</p> <p>16 Q. And were you aware of that -- of</p> <p>17 that provision of the management representation</p> <p>18 letter before you signed the document?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have an understanding as to</p> <p>21 why PwC asked for that confirmation of that</p> <p>22 particular part of the management</p> <p>23 representation letter?</p> <p>24 A. It is -- it is -- it is just -- it</p> <p>25 is a typical audit request.</p>
<p style="text-align: right;">Page 104</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And do you understand -- do you have</p> <p>3 an understanding that PwC wanted to know that</p> <p>4 as of the date of the audit whether any</p> <p>5 material changes had occurred since the end of</p> <p>6 the fiscal year, using the definition of</p> <p>7 materiality that is in this particular</p> <p>8 management representation letter?</p> <p>9 A. It -- it is -- it is -- it is a --</p> <p>10 it is as described. It is just a poorly worded</p> <p>11 question, so it is hard for me to say yes.</p> <p>12 Q. If I asked you this, I apologize,</p> <p>13 but did you ever learn when the agreement was</p> <p>14 entered into?</p> <p>15 A. I don't -- I don't -- like I said</p> <p>16 before, I don't know or have any details of the</p> <p>17 agreement.</p> <p>18 Q. Okay. Did you ever ask anybody when</p> <p>19 the agreement was entered into?</p> <p>20 A. I did not.</p> <p>21 Q. Let's look at the audited financial</p> <p>22 statements. We will put up on the screen a</p> <p>23 document that has been premarked as Exhibit 34.</p> <p>24 (Exhibit 34 marked.)</p> <p>25 MS. DANDENEAU: And again, if Ms. La</p>	<p style="text-align: right;">Page 105</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Canty could please put that in the chat</p> <p>3 room, that would be great.</p> <p>4 MR. MORRIS: I will assure you we</p> <p>5 will put every document in the chat room.</p> <p>6 Q. Now, I'm just going to ask you</p> <p>7 questions that are related to the provisions of</p> <p>8 this report that concern the affiliate loans,</p> <p>9 but again, Mr. Waterhouse, if there is any part</p> <p>10 of the document that you need to see or that</p> <p>11 you think you might need to see in order to</p> <p>12 refresh your recollection to answer any of my</p> <p>13 questions, will you let me know that?</p> <p>14 A. Yes.</p> <p>15 Q. Because this is a pretty lengthy</p> <p>16 document, but do you see that the cover page</p> <p>17 here is the Highland consolidated financial</p> <p>18 statements for the period ending December 31st,</p> <p>19 2018?</p> <p>20 A. Yes.</p> <p>21 Q. If we can go to -- I think it is the</p> <p>22 next one, looking for PwC's signature line.</p> <p>23 MS. CANTY: I'm sorry, John, did you</p> <p>24 say something?</p> <p>25 MR. MORRIS: Yes, can we turn the</p>

<p style="text-align: right;">Page 106</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 page. I think it is 215. Yes, stop right</p> <p>3 there, just above -- I'm sorry, I want to</p> <p>4 see just the date of the report.</p> <p>5 Q. Okay. Do you see at the bottom of</p> <p>6 that page there, Mr. Waterhouse,</p> <p>7 PricewaterhouseCoopers has signed this audit</p> <p>8 report?</p> <p>9 A. Yes, I see their signature.</p> <p>10 Q. Okay. And it is the dated same day</p> <p>11 as your management representation letter; is</p> <p>12 that right?</p> <p>13 A. It is -- yes, it is the same day.</p> <p>14 Q. Was that the practice to sign the</p> <p>15 management representation letter on the same</p> <p>16 day that the audit report was signed?</p> <p>17 A. Yes, that is typical in every audit.</p> <p>18 Q. Can we just scroll down to the</p> <p>19 balance sheet on the next page.</p> <p>20 Do you see that there is a line</p> <p>21 there that says, Notes and Other Amounts Due</p> <p>22 from Affiliates?</p> <p>23 A. Yes.</p> <p>24 Q. Does that line, to the best of your</p> <p>25 knowledge, include the amounts that were due</p>	<p style="text-align: right;">Page 107</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under the affiliate under the notes signed by</p> <p>3 the affiliates and Mr. Dondero?</p> <p>4 MR. RUKAVINA: Objection to the</p> <p>5 extent that calls for a legal conclusion.</p> <p>6 A. I mean, I would want to see the</p> <p>7 detail and the build to this \$173,398,000, but,</p> <p>8 yes, I mean, if -- if -- given what we</p> <p>9 discussed before, you know, it -- it should</p> <p>10 capture that.</p> <p>11 Q. And -- and while you were the CFO of</p> <p>12 Highland, were all notes held by Highland that</p> <p>13 were issued by an affiliate or Mr. Dondero</p> <p>14 carried as assets on Highland's balance sheets?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Object to form.</p> <p>17 A. I don't -- I don't know how else</p> <p>18 they would be carried.</p> <p>19 Q. Okay. Can you think of any -- are</p> <p>20 you aware of any promissory note issued by an</p> <p>21 affiliate or Mr. Dondero that was not carried</p> <p>22 on Highland's audited financial balance sheets?</p> <p>23 A. I'm -- I'm -- I'm not aware.</p> <p>24 Q. Okay. Are you aware of any category</p> <p>25 of asset on Highland's balance sheet in which</p>
<p style="text-align: right;">Page 108</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 any of the promissory notes issued by an</p> <p>3 affiliate or Mr. Dondero would have been</p> <p>4 included?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Sorry, am I aware of any asset of an</p> <p>7 affiliate being included --</p> <p>8 Q. That -- let me -- let me try again.</p> <p>9 Do you see there is a number of</p> <p>10 different assets that are described on this</p> <p>11 balance sheet?</p> <p>12 A. Yes.</p> <p>13 Q. One of the assets that is described</p> <p>14 is Notes and Other Amounts Due from Affiliates;</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And it is reasonable to conclude</p> <p>18 that the notes from the affiliates and</p> <p>19 Mr. Dondero are included in that line item;</p> <p>20 right?</p> <p>21 A. Yes, based on this description.</p> <p>22 Again, I would want to see a build of this to</p> <p>23 100 percent confirm, but based on the</p> <p>24 description, the asset description, it is -- it</p> <p>25 is likely.</p>	<p style="text-align: right;">Page 109</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Now, does that mean absolute? I</p> <p>3 don't know.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that the promissory notes would have been</p> <p>6 carried on the balance sheet in a category</p> <p>7 other than Notes and Other Amounts Due from</p> <p>8 Affiliates?</p> <p>9 A. If they were deemed -- no. If they</p> <p>10 were deemed an affiliate, you know, under GAAP,</p> <p>11 they should be carried in that line.</p> <p>12 Otherwise, it would go into another line.</p> <p>13 Q. Okay. And do you see the total</p> <p>14 asset base as of December 31st, 2018, was</p> <p>15 approximately \$1.04 billion?</p> <p>16 A. Yes.</p> <p>17 Q. Is my math correct that the Notes</p> <p>18 and Other Amounts Due from Affiliates</p> <p>19 constituted approximately 17 percent of</p> <p>20 Highland's assets as of the end of 2018?</p> <p>21 A. Well, so how are you defining</p> <p>22 Highland?</p> <p>23 Q. Highland Capital Management, L.P.,</p> <p>24 the entity that this audit is subject to -- or</p> <p>25 the subject of.</p>

<p style="text-align: right;">Page 110</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. On a consolidated or unconsolidated</p> <p>3 basis?</p> <p>4 Q. I'm looking at the balance sheet.</p> <p>5 It is a consolidated balance sheet. Okay?</p> <p>6 Does the Notes and Other Amounts Due</p> <p>7 from Affiliates constitute approximately</p> <p>8 17 percent of the total assets of Highland</p> <p>9 Capital Management, L.P., on a consolidated</p> <p>10 basis?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't have a calculator in front</p> <p>13 of me but I will take your math, if you are</p> <p>14 taking the 173 divided by the billion.</p> <p>15 Q. Okay.</p> <p>16 A. If that is accurate, yes. But,</p> <p>17 again, on a consolidated basis.</p> <p>18 Q. And on an unconsolidated basis the</p> <p>19 percentage would be higher; correct?</p> <p>20 A. I -- no. I don't know.</p> <p>21 Q. Well, okay. That is fair.</p> <p>22 MR. MORRIS: Can we turn to</p> <p>23 page 241, please.</p> <p>24 Q. Do you see that this is a section of</p> <p>25 the audit report that is entitled Notes and</p>	<p style="text-align: right;">Page 111</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Other Amounts Due from Affiliates?</p> <p>3 A. Sorry, I can't see the -- the --</p> <p>4 Q. It is at the top.</p> <p>5 A. Notes and Other Amounts Due from</p> <p>6 Affiliates, yes, I see that. I don't -- I</p> <p>7 don't have a page number, but I'm on a page</p> <p>8 that says at the top: Notes and Other Amounts</p> <p>9 Due from Affiliates.</p> <p>10 Q. Okay. And that is the same title of</p> <p>11 the line item on the balance sheet that we just</p> <p>12 looked at; right? Notes and Other Amounts Due</p> <p>13 from Affiliates?</p> <p>14 A. Yes.</p> <p>15 Q. And is it your understanding, based</p> <p>16 on your experience and knowledge as the CFO,</p> <p>17 that this is the section of the narrative that</p> <p>18 ties into the line item that we just looked at?</p> <p>19 A. Yes.</p> <p>20 Q. And is this section of the audit</p> <p>21 report intended to describe and disclose all of</p> <p>22 the material facts concerning the Notes and</p> <p>23 Other Amounts Due from Affiliates?</p> <p>24 MS. DANDENEAU: Objection, form.</p> <p>25 A. This -- these notes -- these notes</p>
<p style="text-align: right;">Page 112</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the financial statements are -- the purpose</p> <p>3 is to disclose any material items in relation</p> <p>4 to that balance sheet line item.</p> <p>5 Q. Okay. And all of the information,</p> <p>6 to the best of your knowledge, that is set</p> <p>7 forth in this section of the audit report was</p> <p>8 provided by Highland; correct?</p> <p>9 A. Yes, it would have been provided by</p> <p>10 the corporate accounting team.</p> <p>11 Q. Okay. And the corporate accounting</p> <p>12 team, did that team report to you in the</p> <p>13 organizational structure?</p> <p>14 A. Yes.</p> <p>15 Q. And did you have any concerns about</p> <p>16 the controls that were in place to make sure</p> <p>17 that the information provided with respect to</p> <p>18 Notes and Other Amounts Due from Affiliates was</p> <p>19 accurate and complete?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Not that I recall.</p> <p>22 Q. Okay. Do you recall ever being</p> <p>23 concerned that any portion of the Notes and</p> <p>24 Other Amounts Due from Affiliates in any audit</p> <p>25 report was inaccurate, incomplete, or not</p>	<p style="text-align: right;">Page 113</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 reliable?</p> <p>3 A. I didn't -- I had concerns about,</p> <p>4 you know, like I talked about before, of there</p> <p>5 were -- there were potentially issues in the</p> <p>6 control environment. But as far as it relates</p> <p>7 to the audited financial statements, any -- the</p> <p>8 team would work with the auditors to disclose</p> <p>9 all -- all notes in Highland's possession.</p> <p>10 And any -- any notes that were</p> <p>11 deemed material by the auditor, right, these</p> <p>12 were disclosed in these -- in this section, you</p> <p>13 know, in -- in the notes to the consolidated</p> <p>14 financial statements as you presented.</p> <p>15 Q. Do you recall ever having a</p> <p>16 conversation with anybody at any time</p> <p>17 concerning the accuracy of the section of audit</p> <p>18 reports that relates to Notes and Other Amounts</p> <p>19 Due from Affiliates?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. You know, as -- as -- I didn't have</p> <p>22 direct conversations with</p> <p>23 PricewaterhouseCoopers as I had, you know --</p> <p>24 I -- I had the team that managed this.</p> <p>25 Again, I wasn't anywhere chose to</p>



<p style="text-align: right;">Page 114</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 being the point person of this audit. And I</p> <p>3 can't recall, you know, when -- you know, I</p> <p>4 don't even know if I was ever the point person</p> <p>5 during my tenure as CFO.</p> <p>6 I don't know if PwC had any concerns</p> <p>7 when they were performing those audit</p> <p>8 procedures. They may have and they may have --</p> <p>9 and it may not have been communicated to me. I</p> <p>10 don't know.</p> <p>11 MR. MORRIS: All right. I move to</p> <p>12 strike.</p> <p>13 Q. And I'm going to ask you to listen</p> <p>14 carefully to my question.</p> <p>15 Did you -- do you recall ever having</p> <p>16 a conversation with anybody at any time</p> <p>17 concerning the accuracy of the reporting</p> <p>18 provided in the audited financial statement on</p> <p>19 the topic of Notes and Other Amounts Due?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I don't recall for this, but that</p> <p>22 doesn't mean that it didn't exist.</p> <p>23 Q. Okay. But you have no reason to</p> <p>24 believe, as you sit here right now, that you</p> <p>25 ever discussed with anybody concerns over the</p>	<p style="text-align: right;">Page 115</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 accuracy of the section of the audit reports</p> <p>3 called Notes and Other Amounts Due from</p> <p>4 Affiliates; correct?</p> <p>5 MS. DANDENEAU: Object to the form.</p> <p>6 MS. DEITSCH-PEREZ: Objection to</p> <p>7 form.</p> <p>8 A. I don't recall having any</p> <p>9 conversations. But, again, I mean, this is --</p> <p>10 this is two years ago.</p> <p>11 Q. I'm just asking for your</p> <p>12 recollection, sir.</p> <p>13 A. Yes.</p> <p>14 Q. If you don't recall, this will --</p> <p>15 A. Yeah.</p> <p>16 Q. (Overspeak) -- if you don't</p> <p>17 recall --</p> <p>18 A. Yeah, I don't -- I don't recall.</p> <p>19 Q. Do you know who was responsible for</p> <p>20 drafting the audit report?</p> <p>21 A. Are you asking the actual Highland</p> <p>22 employee responsible? I mean, it was</p> <p>23 Highland's responsibility, so, I mean, that</p> <p>24 is --</p> <p>25 Q. Right.</p>
<p style="text-align: right;">Page 116</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. -- Highland's responsibility.</p> <p>3 Highland's responsibility.</p> <p>4 Q. Who, at Highland, was responsible</p> <p>5 for drafting this section of the audit report?</p> <p>6 A. I -- I don't know the answer to</p> <p>7 that. Again, there was a team who worked on</p> <p>8 this. And I don't know, you know, whether it</p> <p>9 was the staff or the manager.</p> <p>10 Again, this is where I let the teams</p> <p>11 manage. And, you know, there may be a</p> <p>12 corporate accountant who worked on this. I</p> <p>13 just -- you know, I wasn't part of that process</p> <p>14 to give that person experience. I don't know.</p> <p>15 Q. Do you recall having any</p> <p>16 communications with anybody at any time</p> <p>17 concerning this section of the report?</p> <p>18 A. Yeah, I don't recall.</p> <p>19 Q. Do you recall whether you ever told</p> <p>20 anybody at any time that any aspect of this</p> <p>21 section of the report was inaccurate or</p> <p>22 incomplete?</p> <p>23 A. I don't recall.</p> <p>24 Q. As you sit here today, do you have</p> <p>25 any reason to believe that this section of the</p>	<p style="text-align: right;">Page 117</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 audit report is incomplete or inaccurate in any</p> <p>3 way?</p> <p>4 And I'm happy to give you a moment</p> <p>5 to -- to look at it, if you would like.</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Same.</p> <p>8 A. I mean, I would have to look at -- I</p> <p>9 would have to look at the bill to the note</p> <p>10 schedule to make sure I know you presented me</p> <p>11 with materiality, but again, there might be a</p> <p>12 note as of 12/31/18 that somehow was -- was</p> <p>13 under materiality not disclosed. I don't -- I</p> <p>14 don't know. I would need more information.</p> <p>15 Q. Okay. But without more information,</p> <p>16 you have no reason to believe anything this</p> <p>17 section is inaccurate; correct?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't. I mean, you know, this was</p> <p>20 part of the audit.</p> <p>21 Q. Thank you. Now, you will see if we</p> <p>22 could scroll just a little bit more that each</p> <p>23 of the first five paragraphs concerns</p> <p>24 specifically the four affiliates that we've</p> <p>25 been discussing and Mr. Dondero.</p>

<p style="text-align: right;">Page 118</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: If we could go the</p> <p>3 other way, La Asia. We don't need Okada.</p> <p>4 We're going to have to thread the needle.</p> <p>5 Okay. Good, perfect.</p> <p>6 Q. Do you see those five paragraphs</p> <p>7 certain the four affiliates and Mr. Dondero as</p> <p>8 we've been referring to today?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And do you see at the end of</p> <p>11 every paragraph it states, quote: A fair value</p> <p>12 of a partnership's outstanding notes receivable</p> <p>13 approximates the carrying value of the notes</p> <p>14 receivable?</p> <p>15 A. Yes, I see that.</p> <p>16 Q. Do you have an understanding of what</p> <p>17 that means?</p> <p>18 A. Yes.</p> <p>19 Q. What is your understanding of that</p> <p>20 sentence?</p> <p>21 A. It is the -- again, the -- the fair</p> <p>22 value, right, which is -- which is what the --</p> <p>23 what Highland could sell that asset for. This</p> <p>24 statement is comparing the fair value of the</p> <p>25 notes to the carrying value, so the carrying</p>	<p style="text-align: right;">Page 119</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 value is the line item that you showed me</p> <p>3 earlier that is in Notes and Other Amounts Due</p> <p>4 from Affiliates.</p> <p>5 Q. Okay. Is another way to say this is</p> <p>6 that the fair market value of the notes equals</p> <p>7 the principal amount and -- withdrawn.</p> <p>8 Is the fair way to interpret this</p> <p>9 that the fair market value of the notes equals</p> <p>10 all remaining unpaid principal and interest due</p> <p>11 under the notes?</p> <p>12 MS. DANDENEAU: Object to the form.</p> <p>13 MS. DEITSCH-PEREZ: Objection, form.</p> <p>14 A. I don't know the answer to that,</p> <p>15 because I don't recall where -- where any --</p> <p>16 where -- in what line item was the interest</p> <p>17 component reported.</p> <p>18 Q. All right. Well, if we look in this</p> <p>19 audit report, you will see in the middle of the</p> <p>20 first paragraph, for example, it states that as</p> <p>21 of December 31st, 2018, total interest and</p> <p>22 principal due on outstanding promissory notes</p> <p>23 was approximately \$5.3 million.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>
<p style="text-align: right;">Page 120</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that the carrying value or the</p> <p>3 fair value?</p> <p>4 A. That would be the carrying value --</p> <p>5 Q. And is the last --</p> <p>6 A. -- in my opinion.</p> <p>7 Q. Okay. And it is in your opinion as</p> <p>8 the chief financial officer of Highland during</p> <p>9 the period of time that you described; right?</p> <p>10 It is an educated opinion?</p> <p>11 A. I'm reading this at face value. I'm</p> <p>12 taking that as that is carrying value.</p> <p>13 Q. Okay. And does the last sentence</p> <p>14 say that the carrying value is roughly</p> <p>15 approximate to the fair market value?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 MS. DEITSCH-PEREZ: Objection, form.</p> <p>18 A. Again, this note to the financial</p> <p>19 statement is specific to notes and other</p> <p>20 amounts due from affiliates.</p> <p>21 Q. Correct.</p> <p>22 A. If the interest component is</p> <p>23 reported elsewhere on the balance sheet, you</p> <p>24 know, it -- it -- it could be off. Again, I</p> <p>25 don't have the detail. I don't know, but yes,</p>	<p style="text-align: right;">Page 121</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 look, I mean, if you -- I mean, if you are</p> <p>3 saying the 5.3 million is in the notes and</p> <p>4 other amounts due from affiliates, then the</p> <p>5 last statement is saying the fair value</p> <p>6 approximates 5.3 million. That is what that</p> <p>7 last sentence is saying.</p> <p>8 Q. Do you see in the middle of the</p> <p>9 first paragraph -- not in the middle, the next</p> <p>10 to last sentence there is a statement that the</p> <p>11 partnership will not demand payment on amounts</p> <p>12 that exceed HCMFA's excess cash availability</p> <p>13 prior to May 31st, 2021.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Do you know when Highland agreed not</p> <p>17 to demand payment as described in that</p> <p>18 sentence?</p> <p>19 A. I don't know specifically.</p> <p>20 Q. Do you know why Highland agreed not</p> <p>21 to demand payment on HCMFA's notes until May</p> <p>22 2021?</p> <p>23 A. Yes.</p> <p>24 Q. Why was that decision made?</p> <p>25 A. You know, well, it -- it -- that</p>

<p style="text-align: right;">Page 122</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 decision was made as to not put HCMFA into a</p> <p>3 position where it didn't have sufficient assets</p> <p>4 to pay for the demand note.</p> <p>5 Q. And at the time the agreement was</p> <p>6 entered into, pursuant to which the partnership</p> <p>7 wouldn't demand payment, did HCMFA have</p> <p>8 insufficient assets to satisfy the notes if a</p> <p>9 demand had been made?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't have HCMFA's financial</p> <p>12 statements in front of me as of 12/31/18.</p> <p>13 Q. Was there a concern that HCMFA would</p> <p>14 be unable to satisfy its demands under the</p> <p>15 notes if demand was made?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. Well, there is -- I don't recall --</p> <p>18 I mean, there is something, right, in place to</p> <p>19 basically not demand payment until May 31, 2021</p> <p>20 as detailed here.</p> <p>21 Q. And who made the decision to enter</p> <p>22 into -- who made the decision on behalf of</p> <p>23 Highland not to demand payment until May 31st,</p> <p>24 2021?</p> <p>25 A. I'm trying to remember. I don't</p>	<p style="text-align: right;">Page 123</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 remember exactly -- I don't remember if it was</p> <p>3 myself or -- or Jim Dondero who -- who -- there</p> <p>4 was -- there was something signed, from what I</p> <p>5 recall, that -- that -- that backed up this</p> <p>6 line item in the -- in the notes I'm -- look,</p> <p>7 I'm, I'm --</p> <p>8 Q. We will get to that.</p> <p>9 A. You --</p> <p>10 Q. I'm just --</p> <p>11 A. You have -- I mean --</p> <p>12 Q. We're going to give that to you.</p> <p>13 I'm going to give that to you.</p> <p>14 A. You -- you -- you have all the</p> <p>15 documents. I don't have the documents, and</p> <p>16 that is what makes it so hard. I don't have</p> <p>17 any documents to prepare for this deposition;</p> <p>18 right? You have all -- I don't -- I don't -- I</p> <p>19 don't remember, but, you know, again, it would</p> <p>20 probably be myself or Jim.</p> <p>21 Q. Do you know if Highland received</p> <p>22 anything in return for its agreement not to</p> <p>23 make a demand for two years?</p> <p>24 A. I don't -- I don't think it referred</p> <p>25 anything.</p>
<p style="text-align: right;">Page 124</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did you and Mr. Dondero discuss</p> <p>3 HCMFA's ability to satisfy the notes if a</p> <p>4 demand was made at the time this agreement was</p> <p>5 entered into?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I don't -- I don't -- I don't recall</p> <p>8 having a specific conversation, if I did, or --</p> <p>9 or David Klos.</p> <p>10 Q. Okay. I'm just asking if you recall</p> <p>11 any conversations that you had.</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay. Do you know why Highland</p> <p>14 loaned the money to HCMFA that is the subject</p> <p>15 of the notes described in this paragraph?</p> <p>16 A. I don't remember specifically why</p> <p>17 5.3 million was loaned. I mean, I -- it would</p> <p>18 have to be put in the context.</p> <p>19 Q. Do you have any recollection at all</p> <p>20 as to why Highland ever loaned any money to</p> <p>21 HCMFA?</p> <p>22 A. Yes.</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 Q. What do you remember about that?</p> <p>25 A. There was a Highland Global</p>	<p style="text-align: right;">Page 125</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Allocation Fund, which was a -- a fund managed</p> <p>3 by Highland Capital Management Fund Advisors.</p> <p>4 There was a -- we -- I'm just telling you,</p> <p>5 there was -- there was -- there was a -- a</p> <p>6 ultimately a NAV error found in this fund while</p> <p>7 it was an open-ended fund and, you know, there</p> <p>8 were amounts owed by the advisor in -- in</p> <p>9 relation to that NAV error.</p> <p>10 There were also, for the same fund,</p> <p>11 that same fund was ongoing an</p> <p>12 open-end-to-close-end conversion, and as part</p> <p>13 of that proposal, shareholders who voted for</p> <p>14 the conversion received compensation from the</p> <p>15 advisor.</p> <p>16 Q. All right. Now, the events that</p> <p>17 you're describing occurred in the spring of</p> <p>18 2019; right?</p> <p>19 A. These started back -- I think, I</p> <p>20 mean --</p> <p>21 Q. I apologize.</p> <p>22 A. -- that -- I mean, the answer to</p> <p>23 that is no.</p> <p>24 Q. I apologize, the loans that were</p> <p>25 made in connection with the events that you're</p>

<p style="text-align: right;">Page 126</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 describing occurred in May 2019; right?</p> <p>3 MR. RUKAVINA: Objection to the</p> <p>4 extent that calls for a legal conclusion.</p> <p>5 A. I don't recall specifically what</p> <p>6 amounts of money were moved when, for what</p> <p>7 purpose.</p> <p>8 Q. Okay. Fair enough. Going to the</p> <p>9 next paragraph, do you recall that NexPoint</p> <p>10 Advisors had obtained a number of loans from</p> <p>11 Highland, and they rolled up those loans into</p> <p>12 one note in approximately 2017?</p> <p>13 A. This is for NexPoint Advisors?</p> <p>14 Q. Yes.</p> <p>15 A. I -- I mean, I don't -- I don't</p> <p>16 recall the NexPoint Advisors loan being a</p> <p>17 roll-up loan, but --</p> <p>18 Q. Do you know why?</p> <p>19 A. But, look, if you have documents</p> <p>20 that show -- I mean, look, I just don't recall.</p> <p>21 Q. Okay. That is fair. Do you know</p> <p>22 why -- do you have any recollection as to why</p> <p>23 Highland loaned money to NexPoint?</p> <p>24 A. Yes.</p> <p>25 Q. Why did High -- why do you recall --</p>	<p style="text-align: right;">Page 127</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 what is the reason you recall Highland lending</p> <p>3 money to NexPoint?</p> <p>4 A. I mean, I was just -- I just -- I</p> <p>5 just recall. I mean, I just -- I don't</p> <p>6 remember why.</p> <p>7 Q. I understand. And I'm asking you if</p> <p>8 you recall --</p> <p>9 A. Oh, why -- I thought you say --</p> <p>10 NexPoint Advisors was launching a fund which</p> <p>11 is -- I believe that the legal name is NexPoint</p> <p>12 Capital, Inc. And it -- it provided a</p> <p>13 co-invest into that fund.</p> <p>14 And, from what I remember, the --</p> <p>15 the -- that NexPoint borrowed money from</p> <p>16 Highland at the time to make that co-invest.</p> <p>17 Q. So this was an investment that</p> <p>18 NexPoint was required to make; is that right?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't know if it was required to</p> <p>21 make, I don't recall that, or if it just made</p> <p>22 it.</p> <p>23 Q. Okay. But your recollection is that</p> <p>24 NexPoint made an investment and they borrowed</p> <p>25 money from Highland to finance the investment.</p>
<p style="text-align: right;">Page 128</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Do I have that right?</p> <p>3 A. Yes.</p> <p>4 Q. How about HCRE? Do you know why</p> <p>5 HCRE borrowed money from Highland?</p> <p>6 A. I don't remember specifically.</p> <p>7 Q. Do you remember generally?</p> <p>8 A. Generally, yeah -- I mean, yes.</p> <p>9 Q. Can you tell me your general</p> <p>10 recollection as to why Highland loaned money to</p> <p>11 HCRE?</p> <p>12 A. For -- for -- for investment</p> <p>13 purposes.</p> <p>14 Q. So HCRE made the investment and it</p> <p>15 obtained a loan, or loans, from Highland in</p> <p>16 order to finance that investment or those</p> <p>17 investments.</p> <p>18 Do I have that right?</p> <p>19 A. I mean, I -- you know, generally.</p> <p>20 Q. Okay. How about Highland Management</p> <p>21 Services, Inc.?</p> <p>22 Do you have any recollection as to</p> <p>23 why HCMS borrowed money from Highland?</p> <p>24 A. Generally.</p> <p>25 Q. What is your general recollection as</p>	<p style="text-align: right;">Page 129</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to why HCMS borrowed money from Highland?</p> <p>3 A. For -- for investment purposes.</p> <p>4 Q. So it is the same thing, HCMS wanted</p> <p>5 to make investments and it borrowed money from</p> <p>6 Highland in order to finance those investments;</p> <p>7 is that right?</p> <p>8 A. I mean, yes, generally. I mean, I</p> <p>9 can't -- I don't -- on the services, there --</p> <p>10 there are several loans in these schedules.</p> <p>11 You know, I can't remember why every single one</p> <p>12 of these were made, but I would say, yeah, I</p> <p>13 mean, generally.</p> <p>14 Q. Okay. I appreciate that.</p> <p>15 MR. MORRIS: Let's go to the page</p> <p>16 with Bates No. 251. La Asia, are you</p> <p>17 there?</p> <p>18 MS. CANTY: Sorry, John. It went</p> <p>19 out for a minute. Can you say that again.</p> <p>20 I don't know what is going on.</p> <p>21 MR. MORRIS: The page with Bates</p> <p>22 No. 251, can we go to that.</p> <p>23 MS. CANTY: Yes, sorry.</p> <p>24 MR. MORRIS: Keep going to the</p> <p>25 bottom. Yeah, there you go.</p>

<p style="text-align: right;">Page 130</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you see, Mr. Waterhouse, that</p> <p>3 there is a section there called Subsequent</p> <p>4 Events?</p> <p>5 A. I do.</p> <p>6 Q. And does this relate to the last</p> <p>7 sentence above the signature line on the</p> <p>8 management representation letter that we talked</p> <p>9 about earlier where you made the representation</p> <p>10 that you disclosed subsequent events?</p> <p>11 A. I mean, it relates to it, but not in</p> <p>12 its entirety.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: If we can scroll up to</p> <p>15 capture the entirety of this section right</p> <p>16 here.</p> <p>17 Q. And what do you mean by that, sir?</p> <p>18 MR. MORRIS: Yeah, right there.</p> <p>19 Perfect.</p> <p>20 A. There are -- there are different</p> <p>21 subsequent events in -- under GAAP. So there</p> <p>22 are -- and -- and -- so what we see in the</p> <p>23 notes to the financial statements are one type</p> <p>24 of subevent.</p> <p>25 Q. Okay. And -- and would the type of</p>	<p style="text-align: right;">Page 131</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 subsequent event relating to affiliate loans be</p> <p>3 captured in this section if they were -- if</p> <p>4 they were made after the end of the fiscal year</p> <p>5 and prior to the issuance of the audit report?</p> <p>6 A. Yes, if they were deemed material or</p> <p>7 disclosable.</p> <p>8 Q. Okay. I appreciate that.</p> <p>9 Do you see the next to the last</p> <p>10 entry there? It says, Over the course of 2019</p> <p>11 through the report date, HCMFA issued</p> <p>12 promissory notes to the partnership in the</p> <p>13 aggregate amount of \$7.4 million?</p> <p>14 A. Yes.</p> <p>15 Q. And does that refresh your</p> <p>16 recollection that those are the notes that</p> <p>17 related to the NAV error that you mentioned</p> <p>18 earlier?</p> <p>19 A. I don't -- I don't remember the</p> <p>20 exact. Again, there are -- I mentioned two</p> <p>21 line items; right?</p> <p>22 Q. Yes.</p> <p>23 A. I mean, it was the GAAP conversion</p> <p>24 process plus the -- the NAV error. I don't</p> <p>25 have the details. I don't recall specifically</p>
<p style="text-align: right;">Page 132</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 if -- you know, what -- if that 7.4 million was</p> <p>3 solely attributable to the NAV error.</p> <p>4 Q. Okay. But there is no question that</p> <p>5 Highland told PricewaterhouseCoopers that over</p> <p>6 the course of 2019 HCMFA issued promissory</p> <p>7 notes to the partnership in the aggregate</p> <p>8 amount of \$7.4 million; correct?</p> <p>9 A. In the course of the audit, we would</p> <p>10 have produced all promissory notes in our</p> <p>11 possession, including the ones that are</p> <p>12 detailed here.</p> <p>13 Q. Do you recall that you signed the</p> <p>14 two promissory notes that are referenced in</p> <p>15 that provision?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. I didn't recall initially but I've</p> <p>18 been reminded.</p> <p>19 Q. Okay. And -- and do you recall that</p> <p>20 those notes are dated May 2nd and May 3rd,</p> <p>21 2019?</p> <p>22 A. Yes.</p> <p>23 Q. So that was just a month before the</p> <p>24 audit was completed; correct?</p> <p>25 A. Yes. I think we had a June 3rd</p>	<p style="text-align: right;">Page 133</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 date, right, if -- if my memory serves me</p> <p>3 right.</p> <p>4 Q. Yes, I will represent to you that</p> <p>5 your memory is accurate in that regard.</p> <p>6 Did anybody ever instruct you as the</p> <p>7 CFO to correct this statement that we're</p> <p>8 looking at in subsequent events?</p> <p>9 A. So let me understand. You're saying</p> <p>10 when I was CFO at Highland Capital did anyone</p> <p>11 ever ask me to correct the -- over the course</p> <p>12 of 2019 through the report date HCMFA issued</p> <p>13 promissory notes, this statement?</p> <p>14 Q. Right.</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. While you were the CFO of Highland,</p> <p>17 did anybody ever tell you that that sentence</p> <p>18 was wrong?</p> <p>19 A. Not that I'm aware.</p> <p>20 Q. Highland -- withdrawn.</p> <p>21 HCMFA disclosed these notes in its</p> <p>22 own audited financial statements; right?</p> <p>23 MR. RUKAVINA: Objection, form.</p> <p>24 A. I assume that these would be</p> <p>25 material -- if these are material financial</p>



<p style="text-align: right;">Page 134</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 statements, yes, they -- they -- they should be</p> <p>3 and they were likely disclosed.</p> <p>4 Q. Now, there is no statement</p> <p>5 concerning the 2019 notes about the forbearance</p> <p>6 that we looked at in the affiliated note</p> <p>7 section of the report; right?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. I'll withdraw. That was bad.</p> <p>10 Do you recall when we were looking</p> <p>11 at the paragraph concerning HCMFA earlier it</p> <p>12 had that disclosure about the agreement whereby</p> <p>13 Highland wouldn't ask for demand on the -- on</p> <p>14 the HCMFA notes?</p> <p>15 A. Yes.</p> <p>16 Q. That forbearance disclosure is not</p> <p>17 made with respect to the 2019 notes; right?</p> <p>18 A. Not -- look, not that I can recall,</p> <p>19 unless -- unless it was done at a subsequent</p> <p>20 day.</p> <p>21 Q. Right. And it is not in the</p> <p>22 subsequent event section that we're looking at</p> <p>23 right now where the 2019 notes are described;</p> <p>24 right?</p> <p>25 A. Right. But this is through</p>	<p style="text-align: right;">Page 135</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 June 3rd. It could have been done on June 4th.</p> <p>3 I don't -- I don't -- I don't recall.</p> <p>4 Q. Okay.</p> <p>5 MR. MORRIS: Can we put up on the</p> <p>6 screen the HCMFA audit report. And while</p> <p>7 we're --</p> <p>8 MS. DANDENEAU: What exhibit is</p> <p>9 this?</p> <p>10 MR. MORRIS: La Asia, what number is</p> <p>11 that?</p> <p>12 MS. CANTY: 45.</p> <p>13 MR. MORRIS: So this will be marked</p> <p>14 as Exhibit 45.</p> <p>15 (Exhibit 45 marked.)</p> <p>16 MS. CANTY: Yeah, and I will put it</p> <p>17 in the chat.</p> <p>18 MS. DANDENEAU: Thank you.</p> <p>19 Q. Okay. All right. Do you see that</p> <p>20 this is the consolidated financial statements</p> <p>21 for HCMFA for the period ending 12/31/18?</p> <p>22 A. Yes.</p> <p>23 Q. As the treasurer of HCMFA at the</p> <p>24 time, did you have to sign a management</p> <p>25 representation letter similar to the one that</p>
<p style="text-align: right;">Page 136</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 we looked at earlier for Highland?</p> <p>3 A. I would imagine I would have been</p> <p>4 asked to. I don't recall if I did.</p> <p>5 Q. Do you recall ever being asked by an</p> <p>6 auditor to sign a management representation</p> <p>7 letter and then not doing it?</p> <p>8 A. No.</p> <p>9 MR. MORRIS: Can we just scroll down</p> <p>10 again. I just want to see the date of the</p> <p>11 document.</p> <p>12 A. I mean, let me -- you know, there</p> <p>13 are different versions to management</p> <p>14 representation letters I will qualify.</p> <p>15 Yes, there are certain -- from time</p> <p>16 to time auditors can make representations</p> <p>17 that -- in the rep letter that is being</p> <p>18 proposed that are inaccurate or out of scope or</p> <p>19 things like that and they've asked for</p> <p>20 signature.</p> <p>21 In that context, yes. I mean, you</p> <p>22 know -- I mean, if I have been asked to sign</p> <p>23 and make those representations and those</p> <p>24 representations are invalid, yes, I would not,</p> <p>25 I mean, I -- I wouldn't sign that.</p>	<p style="text-align: right;">Page 137</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. PricewaterhouseCoopers served</p> <p>3 as HCMFA's outside auditors as well; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you see that this audit report is</p> <p>6 signed on June 3rd, 2019, just like the</p> <p>7 Highland audit report?</p> <p>8 A. That is correct.</p> <p>9 Q. And did the process of -- of</p> <p>10 preparing HCMFA's audit report, was that the</p> <p>11 same process that Highland followed when it did</p> <p>12 its audit report at this time?</p> <p>13 A. I mean, it is a different entity.</p> <p>14 There are different assets. You know, it --</p> <p>15 it -- it is -- as you saw, Highland's</p> <p>16 financials are on a consolidated basis. This</p> <p>17 is different, so it is under the same control</p> <p>18 environment and team.</p> <p>19 Q. Okay. I appreciate that. So the</p> <p>20 same control environment and team participated</p> <p>21 in the preparation of the audit for Highland</p> <p>22 and for HCMFA at around the same time; correct?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Can we go to page 17 of</p> <p>25 the report. I don't have the Bates number.</p>

<p style="text-align: right;">Page 138</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that just like</p> <p>3 Highland's audited financial report, HCMFA's</p> <p>4 audited financial report also has a section</p> <p>5 related to subsequent events?</p> <p>6 A. Yes.</p> <p>7 Q. And am I reading this correctly that</p> <p>8 just as Highland had done, HCMFA disclosed in</p> <p>9 its audited financial report a subsequent event</p> <p>10 that related to the issuance of promissory</p> <p>11 notes to Highland in the aggregate amount of</p> <p>12 \$7.4 million in 2019?</p> <p>13 A. That is what I see in the report.</p> <p>14 Q. And you were the treasurer of HCMFA</p> <p>15 at the time; right?</p> <p>16 A. Yes, to the best of my knowledge.</p> <p>17 Q. And did anybody ever tell you prior</p> <p>18 to the time of the issuance of this audit</p> <p>19 report that that sentence relating to HCMFA's</p> <p>20 2019 notes was inaccurate or wrong in any way?</p> <p>21 A. Not that I recall.</p> <p>22 Q. As you sit here right now, has</p> <p>23 anybody ever told you that that sentence is</p> <p>24 inaccurate or wrong in any way?</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">Page 139</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. I apologize if I asked you this</p> <p>3 already, but has anybody ever told you at any</p> <p>4 time that you are not authorized to sign the</p> <p>5 promissory notes that are the subject of the</p> <p>6 sentence we're looking at?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did anybody ever tell you at any</p> <p>9 time that you had made a mistake when you</p> <p>10 signed the promissory notes that are the</p> <p>11 subject of this sentence?</p> <p>12 A. Say that again. Did anyone ever say</p> <p>13 that I made a mistake?</p> <p>14 Q. Let me ask the question again.</p> <p>15 Did anybody ever tell you at any</p> <p>16 time that you made a mistake when you signed</p> <p>17 the two promissory notes in Highland's favor on</p> <p>18 behalf of HCMFA in 2019?</p> <p>19 A. Not that I recall.</p> <p>20 MR. MORRIS: Let's just look at the</p> <p>21 promissory notes quickly. Can we please</p> <p>22 put up Document Number 1, and so this is in</p> <p>23 the pile that y'all have. We'll just go</p> <p>24 for a few more minutes and we can take our</p> <p>25 lunch break.</p>
<p style="text-align: right;">Page 140</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. All right. So I don't know if you</p> <p>3 have seen this before, sir. Do you see that</p> <p>4 this is a complaint against HCMFA?</p> <p>5 A. Yes, I am looking at it on the</p> <p>6 screen.</p> <p>7 Q. Okay. And have you ever seen this</p> <p>8 document before?</p> <p>9 A. I went through some of these</p> <p>10 documents with my counsel here yesterday.</p> <p>11 MR. MORRIS: All right. Can we go</p> <p>12 to Exhibit 1 of this document.</p> <p>13 Q. Do you see Exhibit 1 is a</p> <p>14 \$2.4 million promissory note back in 2019?</p> <p>15 A. Yeah, I found it in the book. Yes,</p> <p>16 I have it here in front of me.</p> <p>17 Q. And this is a demand note, right, if</p> <p>18 you look at Paragraph 2?</p> <p>19 A. Yes.</p> <p>20 Q. And this is a note where the maker</p> <p>21 is HCMFA, and Highland is the payee; right?</p> <p>22 A. Yes.</p> <p>23 MR. MORRIS: And if we can scroll</p> <p>24 down, can we just see Mr. Waterhouse's</p> <p>25 signature.</p>	<p style="text-align: right;">Page 141</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is that your signature, sir?</p> <p>3 A. Yes, it is.</p> <p>4 Q. And did you sign this document on or</p> <p>5 around May 2nd, 2019?</p> <p>6 A. I don't recall specifically signing</p> <p>7 this, but this is my signature.</p> <p>8 Q. Okay. And do you recall that</p> <p>9 Highland transferred \$2.4 million to HCMFA at</p> <p>10 or around the time you signed this document?</p> <p>11 A. I don't recall specifically. I</p> <p>12 would want to, as I sit here today, go back and</p> <p>13 confirm that, but again, presumably that --</p> <p>14 that -- that did happen.</p> <p>15 Q. You wouldn't have signed this</p> <p>16 document if you didn't believe that HCMFA</p> <p>17 either received or was going to receive</p> <p>18 \$2.4 million from Highland; is that fair?</p> <p>19 A. I mean, it -- if -- if -- if there</p> <p>20 wasn't a transfer of value, yeah, I mean, you</p> <p>21 know, I would have no reason to -- to sign a</p> <p>22 note.</p> <p>23 Q. And -- and Highland wouldn't have</p> <p>24 given this note to PricewaterhouseCoopers if --</p> <p>25 withdrawn.</p>

<p style="text-align: right;">Page 142</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMFA wouldn't have given this note</p> <p>3 to PricewaterhouseCoopers if it hadn't received</p> <p>4 the principal value of -- of the note in the</p> <p>5 form of a loan; correct?</p> <p>6 MR. RUKAVINA: Objection, legal</p> <p>7 conclusion, speculation and form.</p> <p>8 A. Again, we -- what we provided to PwC</p> <p>9 were, as part of the audit, any promissory</p> <p>10 notes executed and outstanding. You know, as a</p> <p>11 part of the audit, they, you know, they -- they</p> <p>12 have copies of all the bank statements,</p> <p>13 things -- things of that sort.</p> <p>14 MR. MORRIS: Okay. Can we go to</p> <p>15 Exhibit 2.</p> <p>16 (Exhibit 2 marked.)</p> <p>17 Q. Do you see that this is a promissory</p> <p>18 note dated May 3rd, 2019 in the amount of</p> <p>19 \$5 million?</p> <p>20 A. Yes.</p> <p>21 Q. Do you believe this is also a demand</p> <p>22 note if you look at Paragraph 2?</p> <p>23 A. Yes.</p> <p>24 Q. And do you see that HCMFA is the</p> <p>25 maker, and Highland is the payee?</p>	<p style="text-align: right;">Page 143</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And if we go to the bottom, can we</p> <p>4 just confirm that that is your signature?</p> <p>5 A. Yes.</p> <p>6 Q. And together these notes are the</p> <p>7 notes that are referred to both in Highland and</p> <p>8 HCMFA's audited financial reports in the</p> <p>9 subsequent event sections; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. They -- they -- they totaled</p> <p>12 \$7.4 million, so presumably, yes.</p> <p>13 Q. Okay. And you were authorized to</p> <p>14 sign these two notes; correct?</p> <p>15 MR. RUKAVINA: Objection, legal</p> <p>16 conclusion.</p> <p>17 A. Yeah. I mean, I'm -- I was the</p> <p>18 officer of -- of HCMFA. You know, I -- I'm not</p> <p>19 the legal expert on -- on what that -- what</p> <p>20 that confers to me or what it doesn't. I mean,</p> <p>21 that is my signature on the notes.</p> <p>22 Q. And you believed you were authorized</p> <p>23 to sign the notes; is that fair?</p> <p>24 A. I signed a lot of documents in my</p> <p>25 capacity, just because it is operational in</p>
<p style="text-align: right;">Page 144</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 nature. So, you know, to me this was just</p> <p>3 another document, to be perfectly honest.</p> <p>4 Q. Sir, would you have signed</p> <p>5 promissory notes with the principal amount of</p> <p>6 \$7.4 million if you didn't believe you were</p> <p>7 authorized to do so?</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Are you frozen?</p> <p>10 A. No. I'm just -- you know, it is --</p> <p>11 you know, again, I typically don't sign</p> <p>12 promissory notes, and I don't recall why I</p> <p>13 signed these, but -- you know, but I did.</p> <p>14 Q. All right. So listen carefully to</p> <p>15 my question. Would you have ever signed</p> <p>16 promissory notes with a face amount of</p> <p>17 \$7.4 million without believing that you were</p> <p>18 authorized to do so?</p> <p>19 A. No. I mean, I'm -- I'm putting my</p> <p>20 signature on there, so no.</p> <p>21 Q. Okay. And would you have signed two</p> <p>22 promissory notes obligating HCMFA to pay</p> <p>23 Highland \$7.4 million without Mr. Dondero's</p> <p>24 prior knowledge and approval?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p style="text-align: right;">Page 145</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. You know, from -- from what I recall</p> <p>4 around these notes, you know, I don't recall</p> <p>5 specifically Mr. -- Mr. Dondero saying to -- to</p> <p>6 make this a loan.</p> <p>7 So my conversation with Mr. Dondero</p> <p>8 around the culmination of the NAV error as</p> <p>9 related to TerreStar which was a -- a -- I</p> <p>10 think it was a year and a half process. I</p> <p>11 don't know, it was a multi-month process, very</p> <p>12 laborious, very difficult.</p> <p>13 When we got to the end, I had a</p> <p>14 conversation with Mr. Dondero on where to, you</p> <p>15 know, basically get the funds to reimburse the</p> <p>16 fund, and I recall him saying, get the money</p> <p>17 from Highland.</p> <p>18 Q. And so he told you to get the money</p> <p>19 from Highland; is that right?</p> <p>20 A. That is what I recall -- in my</p> <p>21 conversation with him, that is -- that is what</p> <p>22 I can recall.</p> <p>23 Q. Do you know who drafted these notes?</p> <p>24 A. I don't.</p> <p>25 Q. Did you ask somebody to draft the</p>



<p style="text-align: right;">Page 146</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 notes?</p> <p>3 A. I didn't ask -- I don't specifically</p> <p>4 ask people to draft notes really. I mean,</p> <p>5 again, you know, the legal group at Highland is</p> <p>6 responsible and has always been responsible for</p> <p>7 drafting promissory notes.</p> <p>8 Q. So based on your -- based on the</p> <p>9 practice, you believe that somebody from the</p> <p>10 Highland's legal department would have drafted</p> <p>11 these notes. Do I have that right?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. John, I also asked you for the Word</p> <p>14 versions of these notes so we could look at</p> <p>15 the properties, and you have not provided</p> <p>16 them. Are you intending to?</p> <p>17 MR. MORRIS: No.</p> <p>18 Q. Can you answer my question, sir?</p> <p>19 A. Again, I --</p> <p>20 MS. DANDENEAU: Do you want him to</p> <p>21 repeat it?</p> <p>22 A. Yeah, why don't you repeat it?</p> <p>23 Q. Sure. Mr. Waterhouse, based on the</p> <p>24 practice that you have described in your</p> <p>25 understanding, do you believe that these notes</p>	<p style="text-align: right;">Page 147</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 would have been drafted by somebody in the</p> <p>3 legal department?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And do you know who would</p> <p>8 have instructed -- do you have any knowledge as</p> <p>9 to who would have instructed the legal</p> <p>10 department to draft these notes?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. It was whoever was working -- I</p> <p>14 mean, it was likely someone on the team. I</p> <p>15 mean, I don't remember exactly on every note or</p> <p>16 every document, but, again, a lot of these</p> <p>17 things of this nature -- they're operational in</p> <p>18 nature -- were handled by the team.</p> <p>19 The team knows to -- I mean, we</p> <p>20 don't draft documents. We're not lawyers.</p> <p>21 We're not attorneys. It is not what I do or</p> <p>22 accountants do.</p> <p>23 So they are always instructed to go</p> <p>24 and -- and go to the legal team to get</p> <p>25 documents like this drafted. Also, when you go</p>
<p style="text-align: right;">Page 148</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to the legal team, the -- you know, we always</p> <p>3 loop in compliance. And compliance -- when you</p> <p>4 go to the legal team, compliance is part of</p> <p>5 legal team. They're made aware of -- of -- of</p> <p>6 these types of transactions.</p> <p>7 Q. And do you believe that you had</p> <p>8 the -- withdrawn.</p> <p>9 Did you ever tell Mr. Dondero --</p> <p>10 (inaudible) -- did you see those?</p> <p>11 A. Sorry.</p> <p>12 MS. DEITSCH-PEREZ: I did not hear</p> <p>13 the end of that question.</p> <p>14 Q. Did you ever tell Mr. Dondero that</p> <p>15 you signed these two notes?</p> <p>16 A. I don't recall ever -- no, I don't</p> <p>17 recall having a conversation with him.</p> <p>18 Q. Did you ever discuss these two notes</p> <p>19 with him at any time?</p> <p>20 A. The conversation, I recall, was what</p> <p>21 I described earlier. And that is the only time</p> <p>22 I recall ever discussing this.</p> <p>23 Q. Okay. But the corporate accounting</p> <p>24 group had a copy of this -- of these two notes.</p> <p>25 And pursuant to the audit process, the</p>	<p style="text-align: right;">Page 149</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 corporate accounting group gave the two notes</p> <p>3 to PricewaterhouseCoopers in connection with</p> <p>4 the audit; correct?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. I mean, that is -- yeah, I</p> <p>7 mean, they -- unless the legal team can also</p> <p>8 retain copies of items like this. I mean, I</p> <p>9 don't know everything that they would retain as</p> <p>10 well.</p> <p>11 The legal team would also, if they</p> <p>12 had documents as part of audits, turn that over</p> <p>13 to the auditors as well. So it could have been</p> <p>14 the corporate accounting team. It could be</p> <p>15 someone on the legal team.</p> <p>16 Q. All right. So you didn't -- you</p> <p>17 didn't draft this note; right?</p> <p>18 A. I -- I -- I did not.</p> <p>19 Q. But somebody at Highland did; is</p> <p>20 that fair?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I don't know. I mean, we can go to</p> <p>24 the legal team. I don't -- I'm not sitting</p> <p>25 behind someone in legal. Maybe they went to</p>

<p style="text-align: right;">Page 150</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 outside counsel. I have no idea.</p> <p>3 Q. Did you have any reason to believe</p> <p>4 you weren't authorized to sign this note,</p> <p>5 either of these two notes?</p> <p>6 A. I think I have already answered that</p> <p>7 question.</p> <p>8 Q. Okay. You didn't give these notes</p> <p>9 to PricewaterhouseCoopers; correct?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall giving these to</p> <p>12 PricewaterhouseCoopers.</p> <p>13 Q. And in the practice that you have</p> <p>14 described, somebody in the corporate accounting</p> <p>15 group would have given these two notes to</p> <p>16 PricewaterhouseCoopers; correct?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. I think I've answered that. I said</p> <p>19 either the corporate accounting team or maybe</p> <p>20 the legal team.</p> <p>21 MR. MORRIS: Okay. Why don't we</p> <p>22 take our lunch break here.</p> <p>23 VIDEOGRAPHER: We're going off the</p> <p>24 record at 1:04 p.m.</p> <p>25 (Recess taken 1:04 p.m. to 1:49 p.m.)</p>	<p style="text-align: right;">Page 151</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: We are back on the</p> <p>3 record at 1:49 p.m.</p> <p>4 Q. Mr. Waterhouse, did you speak with</p> <p>5 anybody during the break about the substance of</p> <p>6 this deposition?</p> <p>7 A. I spoke to -- to Deb and Michelle.</p> <p>8 Q. About the substance of the</p> <p>9 deposition?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me what you talked</p> <p>12 about?</p> <p>13 MS. DANDENEAU: No. We object on</p> <p>14 the basis of privilege.</p> <p>15 Q. Okay. You are going to follow your</p> <p>16 counsel's objection here?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: Can we put up on the</p> <p>20 screen Exhibit 35.</p> <p>21 (Exhibit 35 marked.)</p> <p>22 Q. Are you able to see that document,</p> <p>23 sir?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen an incumbency</p>
<p style="text-align: right;">Page 152</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 certificate before?</p> <p>3 A. I have.</p> <p>4 Q. Do you have a general understanding</p> <p>5 of what an incumbency certificate is?</p> <p>6 A. I have a general understanding.</p> <p>7 Q. What is your general understanding?</p> <p>8 A. You know, those -- my general</p> <p>9 understanding is that the incumbency</p> <p>10 certificate basically lists folks that can --</p> <p>11 are like authorized signers.</p> <p>12 Q. Okay. And do you see that this is</p> <p>13 an incumbency certificate for Highland Capital</p> <p>14 Management Fund Advisors, L.P.?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if we could scroll down</p> <p>17 just a little bit, do you see that it's dated</p> <p>18 effective as of April 11th, 2019?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. Okay. And is that your signature in</p> <p>21 the middle of the signature block?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And by signing it, did you accept</p> <p>24 appointment as the treasurer of HCMFA effective</p> <p>25 as of April 11th, 2019?</p>	<p style="text-align: right;">Page 153</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I'm not the legal -- I don't</p> <p>3 know if this makes me the treasurer or the</p> <p>4 appointment. I don't know -- I don't know</p> <p>5 that, so I don't -- I don't know if that</p> <p>6 document -- again, I think -- again, I'm not</p> <p>7 the legal expert. I think isn't there --</p> <p>8 aren't there other legal documents that detail</p> <p>9 who the officers are that could be incorporated</p> <p>10 or things like that? Again, I don't want to</p> <p>11 play armchair attorney here.</p> <p>12 Q. I'm not asking you for a legal</p> <p>13 conclusion. I'm asking you for your knowledge</p> <p>14 and understanding. When you signed this</p> <p>15 document, did you understand that you were</p> <p>16 accepting an appointment as the treasurer of</p> <p>17 HCMFA?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 MS. DEITSCH-PEREZ: Objection, form.</p> <p>20 A. Again, I don't think this -- that</p> <p>21 wasn't my understanding. I don't think this</p> <p>22 makes -- this document makes me the treasurer.</p> <p>23 Q. What do you think this document --</p> <p>24 why did you sign this document?</p> <p>25 MS. DEITSCH-PEREZ: Objection to</p>

<p style="text-align: right;">Page 154</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MR. MORRIS: You're objecting to the</p> <p>4 form of the question when I asked him why</p> <p>5 did you sign the document? What is the</p> <p>6 basis for the objection?</p> <p>7 MS. DEITSCH-PEREZ: Because, John, I</p> <p>8 think that it does call for a legal</p> <p>9 conclusion other than -- with him saying</p> <p>10 because somebody told me to sign this</p> <p>11 document. But if you want to go there,</p> <p>12 that is fine.</p> <p>13 MR. MORRIS: Okay.</p> <p>14 MS. DANDENEAU: I don't think --</p> <p>15 he's already said he's not a lawyer.</p> <p>16 MR. MORRIS: I'll allow the witness</p> <p>17 to answer this question.</p> <p>18 Q. Why did you sign this document, sir?</p> <p>19 A. I mean, our -- our legal group would</p> <p>20 bring by these incumbency certificates from</p> <p>21 time to time. I have no idea why they're being</p> <p>22 updated, and I was asked to sign.</p> <p>23 Q. Did you ask anybody, what is this</p> <p>24 document?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 155</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anybody tell you why they needed</p> <p>3 you to sign the document?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. You testified earlier that you</p> <p>6 understood that you served as the acting</p> <p>7 treasurer for HCMFA; correct?</p> <p>8 A. Yes.</p> <p>9 Q. How did you become the acting</p> <p>10 treasurer of HCMFA?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I don't -- I don't know the legal --</p> <p>13 I don't know the legal mechanic of how I became</p> <p>14 the acting treasurer.</p> <p>15 Q. I'm not asking for the legal</p> <p>16 mechanic. I'm asking you as the person who</p> <p>17 is --</p> <p>18 MS. DANDENEAU: John, you said --</p> <p>19 MR. MORRIS: Stop.</p> <p>20 MS. DANDENEAU: -- how did you</p> <p>21 become the treasurer. That is --</p> <p>22 MR. MORRIS: Please stop.</p> <p>23 MS. DANDENEAU: That is a legal</p> <p>24 question.</p> <p>25 MR. MORRIS: I am not asking any</p>
<p style="text-align: right;">Page 156</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 legal questions, to be clear. I'm asking</p> <p>3 for this witness' understanding as to how</p> <p>4 he became the acting treasurer of HCMFA.</p> <p>5 If he doesn't know, he can say he doesn't</p> <p>6 know, but this legal stuff is nonsense, and</p> <p>7 I really object to it.</p> <p>8 Q. Sir, I'm asking you a very simple</p> <p>9 question.</p> <p>10 MS. DANDENEAU: Argumentative.</p> <p>11 Q. You testified -- you testified that</p> <p>12 you became the acting treasurer of HCM --</p> <p>13 HCMFA; correct?</p> <p>14 A. Yes.</p> <p>15 Q. How did that happen?</p> <p>16 MS. DANDENEAU: Again, object to</p> <p>17 form.</p> <p>18 MR. MORRIS: I can't wait to do this</p> <p>19 in a courtroom. Good God.</p> <p>20 Q. Go ahead, sir.</p> <p>21 A. I don't know the exact process of</p> <p>22 how that happened.</p> <p>23 Q. Do you have any idea whether signing</p> <p>24 this document was part of the process?</p> <p>25 MR. MORRIS: You know what --</p>	<p style="text-align: right;">Page 157</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection.</p> <p>3 MR. MORRIS: -- withdrawn. You guys</p> <p>4 want to do this, I can't wait. I can't</p> <p>5 wait. This is the craziest stuff ever.</p> <p>6 MS. DANDENEAU: John, he said he's</p> <p>7 not a lawyer, and you are asking him for a</p> <p>8 legal conclusion, and he says he doesn't</p> <p>9 know, and you persist.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 MS. DANDENEAU: So you can ask these</p> <p>12 questions --</p> <p>13 MR. MORRIS: Did anyone -- please</p> <p>14 stop talking.</p> <p>15 MS. DANDENEAU: -- at another</p> <p>16 point -- no, no, no, I'm entitled to talk,</p> <p>17 too; right? If you're going to make these</p> <p>18 accusations as if we're trying to stonewall</p> <p>19 you, this is not the witness to ask that</p> <p>20 question.</p> <p>21 MR. MORRIS: I can't -- I can't</p> <p>22 wait -- I can't wait to do this in a</p> <p>23 courtroom. I will just leave it at that.</p> <p>24 MS. DANDENEAU: That's right, I'm</p> <p>25 sure you can't.</p>

<p style="text-align: right;">Page 158</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did anyone ever tell you, sir, that</p> <p>3 even though you were the acting treasurer of</p> <p>4 HCMFA, that you were not authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. I'm not sure I understand the</p> <p>8 question. I wasn't -- I mean, I'm -- I'm the</p> <p>9 current acting treasurer.</p> <p>10 Q. Did anybody ever tell you at any</p> <p>11 time that even though you were the acting</p> <p>12 treasurer of HCMFA, that you were not</p> <p>13 authorized to sign the two promissory notes</p> <p>14 that we looked at before lunch?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. Not that I recall.</p> <p>17 Q. Did anybody ever tell you at any</p> <p>18 time that you were not authorized to sign the</p> <p>19 two promissory notes that we looked at before</p> <p>20 lunch?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did anybody ever tell you at any</p> <p>23 time that you should not have signed the two</p> <p>24 promissory notes that we looked at before</p> <p>25 lunch?</p>	<p style="text-align: right;">Page 159</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you ever tell anybody at any</p> <p>4 time that you weren't authorized to sign the</p> <p>5 two promissory notes that we looked at before</p> <p>6 lunch?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Did you ever tell anybody at any</p> <p>9 time that you made a mistake when you signed</p> <p>10 the two promissory notes that we looked at</p> <p>11 before lunch?</p> <p>12 A. Not that I recall.</p> <p>13 Q. As you sit here right now, do you</p> <p>14 have any reason to believe that you were not</p> <p>15 authorized to sign the two documents that we</p> <p>16 looked at before lunch?</p> <p>17 MS. DANDENEAU: Objection to form.</p> <p>18 A. If -- if this is the -- the valid</p> <p>19 incumbency certificate, I mean, this does --</p> <p>20 this does detail who the signers are.</p> <p>21 Q. Okay. And looking at that document,</p> <p>22 does that give you comfort that you were</p> <p>23 authorized to sign the two promissory notes</p> <p>24 that we looked at before lunch?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 160</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 MS. DANDENEAU: Objection, form.</p> <p>4 A. Yes.</p> <p>5 Q. As of October 20th -- withdrawn.</p> <p>6 I'm trying to take your mind back to</p> <p>7 a year ago, October 2020. Do you recall at</p> <p>8 that time that the boards of the retail funds</p> <p>9 were making inquiries about obligations that</p> <p>10 were owed by the advisors to Highland in</p> <p>11 connection with their 15(c) review?</p> <p>12 MS. DANDENEAU: Objection to form.</p> <p>13 A. I don't -- I don't recall.</p> <p>14 Q. As of October 2020, you had no</p> <p>15 reason to believe you weren't authorized to</p> <p>16 sign the two promissory notes that we just</p> <p>17 looked at; correct?</p> <p>18 MS. DANDENEAU: Objection, form.</p> <p>19 MS. DEITSCH-PEREZ: Objection to</p> <p>20 form.</p> <p>21 A. I didn't think about it in October</p> <p>22 of 2020, but I mean --</p> <p>23 Q. Did you have any reason to believe</p> <p>24 at that time that you weren't authorized to</p> <p>25 sign the two notes that we just looked at?</p>	<p style="text-align: right;">Page 161</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Not that I'm aware, no.</p> <p>3 Q. Did you have any reason to believe a</p> <p>4 year ago that you made a mistake when you</p> <p>5 signed those two notes?</p> <p>6 A. Not that I'm aware.</p> <p>7 Q. A year ago you believed that HCMFA</p> <p>8 owed Highland the unpaid principal amounts that</p> <p>9 were due under those two notes; correct?</p> <p>10 A. They're -- they're promissory notes</p> <p>11 that were -- as you presented, that were --</p> <p>12 that were executed. Whether they're valid or</p> <p>13 if there's other reasons, I didn't -- I don't</p> <p>14 know.</p> <p>15 Q. I'm not asking you whether they're</p> <p>16 valid or not. I'm asking you for your state of</p> <p>17 mind. A year ago you believed that HCMFA</p> <p>18 was -- was obligated to pay the unpaid</p> <p>19 principal amount under the two notes that you</p> <p>20 signed; correct?</p> <p>21 A. Yeah, I'm -- I'm -- yes.</p> <p>22 Q. Thank you. Are you aware -- you're</p> <p>23 aware that -- that in 2017, NexPoint issued a</p> <p>24 note in favor of Highland in the approximate</p> <p>25 amount of \$30 million; correct?</p>

<p style="text-align: right;">Page 162</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I'm -- I'm -- I'm generally aware.</p> <p>3 Q. Okay. And are you generally aware</p> <p>4 that from time to time, after the note was</p> <p>5 issued by NexPoint, that moneys were applied to</p> <p>6 principal and interest that were due under the</p> <p>7 NexPoint note?</p> <p>8 A. Yes, I'm generally aware.</p> <p>9 Q. Okay. And did anybody ever tell you</p> <p>10 that the payments that were made against the</p> <p>11 NexPoint notes were made by mistake?</p> <p>12 A. Yes.</p> <p>13 Q. And is it the one payment that we</p> <p>14 talked about earlier today?</p> <p>15 A. We talked about a lot of things</p> <p>16 today. What payment are we talking about?</p> <p>17 Q. Okay. Who told you that any payment</p> <p>18 made against the NexPoint note was made by</p> <p>19 mistake?</p> <p>20 A. D.C. Sauter.</p> <p>21 Q. When did Mr. Sauter tell you that?</p> <p>22 A. I don't -- I don't remember</p> <p>23 specifically.</p> <p>24 Q. Do you remember what payments --</p> <p>25 A. Sometime -- sometime this year.</p>	<p style="text-align: right;">Page 163</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Sometime in 2021?</p> <p>3 A. Yes.</p> <p>4 Q. Do you remember what payment he was</p> <p>5 referring to?</p> <p>6 A. It was the -- the payment made in</p> <p>7 January of 2021 or -- yeah, January of -- of</p> <p>8 this -- January of 2021.</p> <p>9 Q. Okay. So did anybody ever tell you</p> <p>10 at any time that any payment that was made</p> <p>11 against principal --</p> <p>12 A. And -- and -- and -- hold on, and it</p> <p>13 may have been other -- again, it may have been</p> <p>14 that payment or -- or there may have been what</p> <p>15 he was explaining, a misapplication of prior</p> <p>16 payments as well.</p> <p>17 Q. Can you -- can you give me any</p> <p>18 specificity -- withdrawn.</p> <p>19 Withdrawn. Can you tell me</p> <p>20 everything that Mr. Sauter told you about --</p> <p>21 about errors in relation to payments made</p> <p>22 against principal and interest due under the</p> <p>23 NexPoint note?</p> <p>24 MS. DANDENEAU: Can I just --</p> <p>25 MR. RUKAVINA: Hold on. Hold on.</p>
<p style="text-align: right;">Page 164</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I'm going to object here, and I'm going to</p> <p>3 instruct the witness not to answer</p> <p>4 depending on the discussion that you had --</p> <p>5 Mr. Waterhouse, I'm the lawyer for</p> <p>6 NexPoint, and as everyone here knows, D.C.</p> <p>7 Sauter is in-house counsel.</p> <p>8 So if you and Mr. Sauter were having</p> <p>9 a factual discussion and him preparing his</p> <p>10 affidavit, et cetera, then go ahead and</p> <p>11 answer that. But if you were having a</p> <p>12 discussion as to our legal strategy in this</p> <p>13 lawsuit, or anything having to do with</p> <p>14 that, then do not answer that.</p> <p>15 And if you need to talk to either</p> <p>16 your counsel or me about that, then we need</p> <p>17 to have that discussion now.</p> <p>18 A. Okay. Yeah, I don't -- I don't</p> <p>19 really know how to make that distinction, so</p> <p>20 maybe I need to talk to counsel before I</p> <p>21 answer, or if I can answer.</p> <p>22 Q. Let me just ask you this question:</p> <p>23 Did -- did you have any conversation with</p> <p>24 Mr. Sauter about any payment of principal and</p> <p>25 interest prior to the time that you left</p>	<p style="text-align: right;">Page 165</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland's employment, or did it happen after</p> <p>3 you left Highland's employment?</p> <p>4 A. I don't -- I don't recall if -- I</p> <p>5 don't recall. I mean, it was sometime in 2021.</p> <p>6 I don't remember if it was before or after I</p> <p>7 was let go from Highland.</p> <p>8 Q. Okay. So -- so nobody told you</p> <p>9 prior to 2021 that any error or mistake was</p> <p>10 made in the application of payments against</p> <p>11 principal and interest due on the NexPoint</p> <p>12 note. Do I have that right?</p> <p>13 A. Yeah, I don't -- I don't recall this</p> <p>14 being in 2020.</p> <p>15 Q. Okay. And it didn't happen in 2019;</p> <p>16 correct?</p> <p>17 A. I don't recall that happened.</p> <p>18 Q. And it didn't happen in 2018;</p> <p>19 correct?</p> <p>20 A. I don't -- I don't recall that</p> <p>21 happening.</p> <p>22 Q. And it didn't happen in 2017;</p> <p>23 correct?</p> <p>24 A. I don't recall.</p> <p>25 Q. But -- but you believe the</p>



<p style="text-align: right;">Page 166</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 conversation took place in 2021. You just</p> <p>3 don't remember if it was before or after you</p> <p>4 left Highland's employment. Do I have that</p> <p>5 right?</p> <p>6 A. It was sometime this year. I</p> <p>7 don't -- I don't remember.</p> <p>8 Q. Okay. Did you report this</p> <p>9 conversation to Mr. Seery at any point?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Did you report this conversation to</p> <p>12 anybody at DSI at any time?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you have -- you don't have a</p> <p>15 recollection of ever doing that; correct?</p> <p>16 A. Yeah, that's right. I don't recall</p> <p>17 doing that.</p> <p>18 Q. Do you recall telling anybody at</p> <p>19 Pachulski Stang about the conversation you</p> <p>20 recall with Mr. Sauter?</p> <p>21 A. No, I don't -- I don't recall.</p> <p>22 Q. Did you tell any of the independent</p> <p>23 board members about your conversation with</p> <p>24 Mr. Sauter?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 167</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you tell any of the employees at</p> <p>3 Highland before you left Highland's employment</p> <p>4 about this call that you had with Mr. Sauter?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. No, I don't -- no, I don't recall.</p> <p>7 Q. NexPoint -- to the best of your</p> <p>8 knowledge, did NexPoint ever file a proof of</p> <p>9 claim against Highland to try to recover moneys</p> <p>10 that were mistakenly paid against the principal</p> <p>11 and interest due under the note?</p> <p>12 A. Okay. Hold on. You are saying did</p> <p>13 NexPoint Advisors file a proof of claim to</p> <p>14 Highland for errors related to payments under</p> <p>15 the NexPoint note to Highland?</p> <p>16 Q. Correct.</p> <p>17 A. I'm -- I'm -- I'm not -- I'm not</p> <p>18 aware.</p> <p>19 Q. Are you aware --</p> <p>20 A. I'm not the legal person here, I</p> <p>21 don't know.</p> <p>22 Q. I'm just asking for your knowledge,</p> <p>23 sir.</p> <p>24 A. Yeah, I don't know. I'm not aware.</p> <p>25 Q. Are you aware of any claim of any</p>
<p style="text-align: right;">Page 168</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 kind that NexPoint has ever made to try to</p> <p>3 recover the amounts that it contends were -- or</p> <p>4 that Mr. Sauter contend were mistakenly applied</p> <p>5 against principal and interest due under the</p> <p>6 NexPoint note?</p> <p>7 A. I'm not aware.</p> <p>8 MS. DANDENEAU: Objection to form.</p> <p>9 Q. Okay. The advisors' agreements with</p> <p>10 the retail funds are subject to annual renewal;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And do you participate in the</p> <p>14 renewal process each year?</p> <p>15 A. Yes.</p> <p>16 Q. What role do you play in the renewal</p> <p>17 process?</p> <p>18 A. I'm -- I'm asked by the retail board</p> <p>19 to walk-through the advisors financials.</p> <p>20 Q. And do you do that in the context of</p> <p>21 a board meeting?</p> <p>22 A. Yes, it is -- yes, it is typically</p> <p>23 done in a board meeting.</p> <p>24 Q. And do you recall the time --</p> <p>25 does -- does the renewal process happen around</p>	<p style="text-align: right;">Page 169</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the same time each year?</p> <p>3 A. Yes, it is -- it is around the same</p> <p>4 time every year.</p> <p>5 Q. And what -- what time period of the</p> <p>6 year does the renewal process occur?</p> <p>7 A. Approximately the September</p> <p>8 timeframe.</p> <p>9 Q. During that process, in your</p> <p>10 experience, does the board typically conduct</p> <p>11 its own diligence and ask for information?</p> <p>12 A. Does the board ask for lots of -- I</p> <p>13 mean, just -- I mean, lots of information as a</p> <p>14 part of that -- that -- as part of that board</p> <p>15 meeting and that process.</p> <p>16 Q. Okay. And do you recall that the</p> <p>17 process in 2020 spilled into October?</p> <p>18 A. Yes. Yes.</p> <p>19 Q. Okay. And as part of the process in</p> <p>20 2020, the retail board asked -- asked what are</p> <p>21 referred to as 15(c) questions; right?</p> <p>22 A. I guess I don't want to be -- they</p> <p>23 asked 15(c) -- are you saying they asked 15(c)</p> <p>24 questions and this is why it went into October</p> <p>25 or --</p>

<p style="text-align: right;">Page 170</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. No, I apologize.</p> <p>3 Do you have an understanding of</p> <p>4 what -- of what 15(c) refers to in the context</p> <p>5 of the annual renewal process?</p> <p>6 A. Yes, generally.</p> <p>7 Q. All right. What is your general</p> <p>8 understanding of the term "15(c)" in the</p> <p>9 context of the annual renewal process?</p> <p>10 A. I -- I think 15(c) is the section</p> <p>11 that -- that -- you know, that -- that the</p> <p>12 board has to evaluate every year, the retail</p> <p>13 board. They have to, you know, go through,</p> <p>14 evaluate, and go through that approval process</p> <p>15 on a yearly basis.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up on the</p> <p>18 screen Exhibit 36, please.</p> <p>19 (Exhibit 36 marked.)</p> <p>20 MR. MORRIS: I guess let's just</p> <p>21 start at the bottom so Mr. Waterhouse can</p> <p>22 see what is here.</p> <p>23 Q. You see this begins with an email</p> <p>24 from Blank Rome to a number of people.</p> <p>25 MR. MORRIS: And if we can scroll</p>	<p style="text-align: right;">Page 171</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 up -- keep going just a little bit.</p> <p>3 Q. You will see that there is an email</p> <p>4 from Lauren Thedford to Thomas Surgent and</p> <p>5 others where she reports that she was attaching</p> <p>6 and reproducing below additional 15(c)</p> <p>7 follow-up questions from the board.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see Question No. 2 asks</p> <p>11 whether there are any material outstanding</p> <p>12 amounts currently payable or due in the future</p> <p>13 (e.g., notes) to HCMLP by HCMFA or NexPoint</p> <p>14 Advisors or any other affiliate that provides</p> <p>15 services to the funds?</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And -- and did you -- do you recall</p> <p>19 that in -- in October of 2020 the retail boards</p> <p>20 were asking for that information?</p> <p>21 A. I don't recall it, but there --</p> <p>22 they're obviously asking in this email.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Can we scroll up a</p> <p>25 little bit, please.</p>
<p style="text-align: right;">Page 172</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then do you see that</p> <p>3 Ms. Thedford includes you on the email string</p> <p>4 on Tuesday, October 6th, at 5:52?</p> <p>5 A. Yes.</p> <p>6 Q. And she asks you and Dave Klos and</p> <p>7 Kristin Hendrix for advice on that particular</p> <p>8 Request No. 2 that I have just read; right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Can you tell me who</p> <p>11 Ms. Thedford is?</p> <p>12 A. She was an attorney that was in the</p> <p>13 legal group.</p> <p>14 Q. At Highland Capital Management,</p> <p>15 L.P.?</p> <p>16 A. I'm -- I'm -- I'm -- I don't</p> <p>17 remember if she was an employee of Highland or</p> <p>18 any of the advisors.</p> <p>19 Q. Okay. Do you know if she served as</p> <p>20 the corporate secretary for both HCMFA and</p> <p>21 NexPoint?</p> <p>22 A. Yes.</p> <p>23 Q. And -- okay.</p> <p>24 Do you know whether Ms. Thedford</p> <p>25 held any positions in relation to the retail</p>	<p style="text-align: right;">Page 173</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 funds as we defined that term?</p> <p>3 A. Yes.</p> <p>4 Q. What is your understanding of the</p> <p>5 positions that Ms. Thedford held at the retail</p> <p>6 funds?</p> <p>7 A. I -- I recall her being an officer.</p> <p>8 I don't recall her title.</p> <p>9 Q. Okay. Is she still an officer at</p> <p>10 any of the retail funds today?</p> <p>11 A. No.</p> <p>12 Q. Do you know when she ceased to be an</p> <p>13 officer of the retail funds?</p> <p>14 A. Approximately.</p> <p>15 Q. And when did she approximately cease</p> <p>16 to be an officer of the retail funds?</p> <p>17 A. It was in -- it was in early of</p> <p>18 2021.</p> <p>19 Q. Okay. Do you know when she became</p> <p>20 an officer of the retail funds?</p> <p>21 A. I don't recall.</p> <p>22 Q. To the best of your recollection,</p> <p>23 was she an officer of the retail funds in</p> <p>24 October of 2020?</p> <p>25 A. I believe so.</p>



<p style="text-align: right;">Page 174</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know what title she</p> <p>3 held in her capacity as an officer, if any?</p> <p>4 A. I told you I don't remember.</p> <p>5 Q. Okay. So she sends this email to</p> <p>6 you at 5:52 p.m. on October 6th.</p> <p>7 And if we can scroll up to the</p> <p>8 response, you responded a minute later with a</p> <p>9 one-word answer: Yes.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And -- and yes is -- yes was in</p> <p>13 response to the retail board's Question No. 2,</p> <p>14 right, whether there are any material</p> <p>15 outstanding amounts currently payable or due in</p> <p>16 the future?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: And can we scroll up to</p> <p>19 see what happened next.</p> <p>20 Q. So Ms. Thedford writes back to you a</p> <p>21 few minutes later and she asks whether you</p> <p>22 could provide the amounts.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And then you respond further and you</p>	<p style="text-align: right;">Page 175</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 refer her to the balance sheet that was</p> <p>3 provided to the board as part of the 15(c)</p> <p>4 materials.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And -- and did the advisors provide</p> <p>8 to the board certain balance sheets in 2020 in</p> <p>9 connection with the 15(c) review?</p> <p>10 A. Yes, they did.</p> <p>11 Q. Okay. And were the amounts that</p> <p>12 were outstanding or that were to be due in the</p> <p>13 future by the advisors to Highland included in</p> <p>14 the liability section of the balance sheet that</p> <p>15 was given to the retail board?</p> <p>16 A. Yes. Notes would be reflected as</p> <p>17 liabilities.</p> <p>18 Q. Okay. And --</p> <p>19 A. If I'm understanding your question</p> <p>20 correctly.</p> <p>21 Q. You are. And -- and -- and those</p> <p>22 liabilities you -- you were -- you believed</p> <p>23 were responsive to the retail board's question;</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 176</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And then if we can scroll up,</p> <p>3 you see Ms. Thedford responds to you</p> <p>4 nine minutes later with a draft response.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And she says that she is taking from</p> <p>8 the 6/30 financials certain information about</p> <p>9 amounts that were due to HCMLP and affiliates</p> <p>10 as of June 30th, 2020.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And did you believe, as the</p> <p>14 treasurer of NexPoint and HCMFA and as the CFO</p> <p>15 of Highland, that the information that</p> <p>16 Ms. Thedford obtained from the 6/30 financials</p> <p>17 was accurate and responsive in relation to the</p> <p>18 retail fund board's question?</p> <p>19 A. I just want to make sure I</p> <p>20 understand the question.</p> <p>21 Are you saying that the financial</p> <p>22 information provided to the retail board as</p> <p>23 part of the 15(c) process, which included</p> <p>24 financial statements as of June 30th of 2021,</p> <p>25 did I feel like those were responsive to their</p>	<p style="text-align: right;">Page 177</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 questions?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Thank you.</p> <p>6 MS. DEITSCH-PEREZ: John, it is not</p> <p>7 in the chat yet. Can you just make sure it</p> <p>8 gets put in there.</p> <p>9 MR. MORRIS: Sure.</p> <p>10 MS. CANTY: I put it in there. I</p> <p>11 think maybe I just sent it directly, so let</p> <p>12 me make sure it says to everyone. But I</p> <p>13 did put it in there. I will try again.</p> <p>14 MR. MORRIS: Thank you, La Asia.</p> <p>15 MS. DANDENEAU: What number is it.</p> <p>16 MR. MORRIS: What, the Bates number?</p> <p>17 MS. DEITSCH-PEREZ: No, the --</p> <p>18 this -- yeah, 36 is not in the chat.</p> <p>19 MR. MORRIS: Okay. We'll get it.</p> <p>20 MS. DANDENEAU: I think that</p> <p>21 Ms. Canty just sent it to me originally.</p> <p>22 Sorry.</p> <p>23 MR. MORRIS: Okay. We will get it</p> <p>24 there.</p> <p>25 MS. CANTY: Okay. It is there now</p>

<p style="text-align: right;">Page 178</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for everyone.</p> <p>3 MS. DEITSCH-PEREZ: Got it. Thank</p> <p>4 you.</p> <p>5 Q. Do you recall if the proposed</p> <p>6 response that Ms. Thedford crafted was</p> <p>7 delivered to the retail board with the -- with</p> <p>8 the yellow dates having been completed?</p> <p>9 A. I don't know.</p> <p>10 MR. MORRIS: Davor, I'm going to ask</p> <p>11 that the advisors and -- the advisors of</p> <p>12 both HCMFA and NexPoint produce to me any</p> <p>13 report that was given to the retail board</p> <p>14 concerning the promissory notes at issue,</p> <p>15 including the obligations under the notes.</p> <p>16 Q. Do you know -- do you know if</p> <p>17 ultimately NexPoint informed the retail board</p> <p>18 in response to its question that NexPoint owed</p> <p>19 Highland approximately 23 or \$24 million?</p> <p>20 MS. DANDENEAU: Objection to the</p> <p>21 form.</p> <p>22 A. Sorry, are you asking, did NexPoint</p> <p>23 tell the retail board that it owed Highland?</p> <p>24 Q. Let me ask a better question,</p> <p>25 Mr. Waterhouse.</p>	<p style="text-align: right;">Page 179</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Did -- do you know if anybody ever</p> <p>3 answered the retail board's question that was</p> <p>4 Number 2?</p> <p>5 A. I don't -- I can't say for sure.</p> <p>6 Q. Okay. Do you recall -- I think you</p> <p>7 testified earlier that you walked through the</p> <p>8 advisors' financials with the retail board;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And as part of that process, did you</p> <p>12 disclose to the retail board the obligations</p> <p>13 that NexPoint and HCMFA had to Highland under</p> <p>14 promissory notes?</p> <p>15 A. The retail board, as I stated</p> <p>16 earlier, receives financial information,</p> <p>17 balance sheet, income statement information</p> <p>18 from the advisors. That information is</p> <p>19 provided to the retail board in connection with</p> <p>20 the 15(c) process.</p> <p>21 So any notes between the advisors</p> <p>22 and the Highland would be -- anything would be</p> <p>23 detailed in those financial statements.</p> <p>24 Q. Do you recall in 2020 ever speaking</p> <p>25 with the retail board about the advisors'</p>
<p style="text-align: right;">Page 180</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 obligations under the notes to Highland?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall specifically.</p> <p>7 Q. Do you have any general recollection</p> <p>8 of discussing with the retail board the</p> <p>9 advisors' obligations to Highland under the</p> <p>10 notes that they issued?</p> <p>11 MS. DANDENEAU: Object to the form.</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I just recall generally just -- it</p> <p>15 is just -- I present the financial statements,</p> <p>16 and if they have questions, I answer their</p> <p>17 questions and walk them through.</p> <p>18 I don't recall what they asked. I</p> <p>19 don't recall where the discussion went. I</p> <p>20 don't recall anything of that nature.</p> <p>21 Q. Okay. Do you know if anybody on</p> <p>22 behalf of HCMF -- HCMFA ever told the retail</p> <p>23 board that HCMFA had no obligations under the</p> <p>24 two 2019 notes that you signed? Withdrawn.</p> <p>25 Do you know whether anybody on</p>	<p style="text-align: right;">Page 181</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 behalf of HCMFA ever told the retail boards</p> <p>3 that you weren't authorized to sign either of</p> <p>4 the two 2019 notes?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. I'm not aware.</p> <p>7 Q. Are you aware of anybody on behalf</p> <p>8 of HCMFA ever telling the retail boards that</p> <p>9 your execution of the two 2019 notes was a</p> <p>10 mistake?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. I'm not aware.</p> <p>13 Q. Are you aware of anybody on behalf</p> <p>14 of HCMFA ever telling the retail boards that</p> <p>15 HCMFA did not have to pay the amounts reflected</p> <p>16 in the two notes that you signed in 2019?</p> <p>17 A. I'm not aware.</p> <p>18 Q. Do you know whether anybody ever</p> <p>19 told the retail boards -- withdrawn.</p> <p>20 Do you know whether anybody ever</p> <p>21 told the retail boards that Highland has</p> <p>22 commenced a lawsuit to recover on the two notes</p> <p>23 that you signed in 2019?</p> <p>24 A. I'm not aware.</p> <p>25 Q. Are you aware of anybody informing</p>

<p style="text-align: right;">Page 182</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the retail boards that Highland has sued to</p> <p>3 recover on the NexPoint note?</p> <p>4 A. I'm not aware.</p> <p>5 Q. Do you know whether anybody ever</p> <p>6 told the retail board that Highland had</p> <p>7 declared a default with respect to the two</p> <p>8 HCMFA notes that you signed in 2019?</p> <p>9 A. I'm not aware.</p> <p>10 Q. Are you aware of anybody ever</p> <p>11 informing the retail boards that Highland had</p> <p>12 declared a default under the NexPoint note?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Are you aware of anybody telling the</p> <p>15 retail board that Highland made a demand for</p> <p>16 payment under the 2019 notes that you signed on</p> <p>17 behalf of HCMFA?</p> <p>18 A. I'm not aware.</p> <p>19 Q. Let's -- let's see if there is a</p> <p>20 response to Ms. Thedford's email, if we can</p> <p>21 scroll up.</p> <p>22 Do you see you responded to</p> <p>23 Ms. Thedford five minutes after she provided</p> <p>24 the draft response to you?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 183</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And do you see that Dustin</p> <p>3 Norris is copied on this email?</p> <p>4 A. Yes, he is.</p> <p>5 Q. Great. Do you know whether</p> <p>6 Mr. Norris held any positions at either of the</p> <p>7 advisors as of October 6, 2020?</p> <p>8 A. I will go back to -- I'm not the</p> <p>9 legal expert of what appoints you or how or</p> <p>10 why, but you did see Dustin's name on the</p> <p>11 incumbency certificate that you produced</p> <p>12 earlier.</p> <p>13 Q. Do you know what his title was in</p> <p>14 October of 2020?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't -- I don't recall.</p> <p>17 Q. Was he -- did he have a title with</p> <p>18 each of the advisors, to the best of your</p> <p>19 recollection?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you know why he is included on</p> <p>22 this email string?</p> <p>23 A. I didn't add Dustin. It looks like</p> <p>24 Lauren did. I don't know why she added him or</p> <p>25 not. You would have to ask her.</p>
<p style="text-align: right;">Page 184</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Does Mr. Norris play a role in</p> <p>3 formulating the advisors' responses to the</p> <p>4 questions asked by the retail board in</p> <p>5 connection with the 15(c) annual review?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. He -- Dustin Norris is there in the</p> <p>8 board meetings. But -- so he has a role, yes.</p> <p>9 Q. Okay. And does Mr. Norris hold any</p> <p>10 positions, to the best of your knowledge, in</p> <p>11 relation to any of the retail funds?</p> <p>12 A. I don't -- I don't believe he does.</p> <p>13 Q. How about Mr. Post, do you know</p> <p>14 whether Mr. Post holds any position in either</p> <p>15 of the advisors?</p> <p>16 A. I mean, he -- he -- yes.</p> <p>17 Q. What is your understanding of the</p> <p>18 positions that Mr. Post holds in relation to</p> <p>19 the advisors?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. He is an employee of NexPoint</p> <p>22 Advisors. He is also the chief compliance</p> <p>23 officer for -- for NexPoint.</p> <p>24 Q. Who is the chief compliance officer</p> <p>25 for HCMFA, if you know?</p>	<p style="text-align: right;">Page 185</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to form.</p> <p>3 A. That would be Jason as well.</p> <p>4 Q. Okay. Now, looking at your</p> <p>5 response, you noted initially that nothing was</p> <p>6 owed under shared services. Do I have that</p> <p>7 right in substance?</p> <p>8 A. Yeah. I think I'm being responsive</p> <p>9 to Lauren's question here, whether any of the</p> <p>10 shared service invoices are outstanding.</p> <p>11 Q. Right.</p> <p>12 A. Yes.</p> <p>13 Q. And that is because -- and that is</p> <p>14 because the retail the retail board has asked</p> <p>15 for the disclosure of all material obligations</p> <p>16 that were owed to HCMLP either then or in the</p> <p>17 future; isn't that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 Q. We can go back down and look.</p> <p>20 A. Look, I don't know if that's a</p> <p>21 material item, I mean, again, but sure.</p> <p>22 Q. Okay. But there were no shared</p> <p>23 services outstanding; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. That is what this email seems to</p>

<p style="text-align: right;">Page 186</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 indicate.</p> <p>3 Q. And you wouldn't have written it if</p> <p>4 you didn't believe it to be true at the time;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And when you referred to shared</p> <p>8 services outstanding, what you meant there was</p> <p>9 that neither NexPoint nor HCMFA owed Highland</p> <p>10 any money under the shared services agreements</p> <p>11 that they had with Highland as of October 6th,</p> <p>12 2020; right?</p> <p>13 A. I don't know if it is as of October</p> <p>14 6, 2020 or if it was from -- like through the</p> <p>15 financials -- through the date of the</p> <p>16 financials as of June 30.</p> <p>17 Q. Okay. And then you noted that</p> <p>18 HCMA -- the HCMFA note is a demand note; right?</p> <p>19 A. Yes.</p> <p>20 Q. And then you referred Ms. Thedford</p> <p>21 to Kristin Hendrix for the term of the NexPoint</p> <p>22 note. Do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. And then you refer to that agreement</p> <p>25 that is referenced in the 2018 audited</p>	<p style="text-align: right;">Page 187</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 financials about Highland's agreement not to</p> <p>3 make demand upon HCMFA until May 2021; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And then -- and then the next thing</p> <p>6 you write is that the attorneys think that BK</p> <p>7 doesn't change that, but don't know for sure at</p> <p>8 the end of the day.</p> <p>9 Do you see that sentence?</p> <p>10 A. Yes.</p> <p>11 Q. Which attorneys were you referring</p> <p>12 to?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you have a conversation with</p> <p>15 attorneys concerning whether the bankruptcy</p> <p>16 would change or alter in any way the agreement</p> <p>17 not to make a demand under the HCMFA note?</p> <p>18 A. Look, yeah, I mean, I don't</p> <p>19 specifically remember, but generally, I mean,</p> <p>20 it is in this email. I don't -- I don't -- I</p> <p>21 don't -- I don't remember who I talked to or,</p> <p>22 you know, was it inside counsel, outside</p> <p>23 counsel, but obviously I talked to somebody.</p> <p>24 Q. Do you have any recollection --</p> <p>25 A. Well, I don't even know if it's --</p>
<p style="text-align: right;">Page 188</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 actually, it may not even have been me. I say</p> <p>3 the attorneys in, you know, a lot of -- like I</p> <p>4 talked about the team.</p> <p>5 It could have been someone on the</p> <p>6 team, like, hey, we need to run this down, and</p> <p>7 maybe they talked to attorneys again and</p> <p>8 relayed that information to me.</p> <p>9 So I really don't know if I spoke or</p> <p>10 someone else did or -- or, I mean, and maybe it</p> <p>11 wasn't even from corporate accounting. Maybe</p> <p>12 it was, you know, other -- I'm kind of</p> <p>13 summarizing, you know, again, so I don't really</p> <p>14 know -- I can't really say for sure. I don't</p> <p>15 remember how I came about of this knowledge.</p> <p>16 Q. I appreciate your efforts,</p> <p>17 Mr. Waterhouse, but I will just tell you that</p> <p>18 if I ask a question and you don't know the</p> <p>19 answer or you don't recall, I'm happy to accept</p> <p>20 that. I don't -- I don't want you to</p> <p>21 speculate, so I want to be clear about that.</p> <p>22 So I appreciate it.</p> <p>23 Let me just ask you simply: Do you</p> <p>24 know what attorneys -- can you identify any of</p> <p>25 the attorneys who thought that the bankruptcy</p>	<p style="text-align: right;">Page 189</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 process didn't change the agreement?</p> <p>3 A. I don't recall.</p> <p>4 Q. Okay. Perfect.</p> <p>5 And then let's look at the last</p> <p>6 sentence. It says, quote: The response should</p> <p>7 include, as I covered in the board meeting,</p> <p>8 that both entities have the full faith and</p> <p>9 backing from Jim Dondero, and to my knowledge</p> <p>10 that hasn't changed.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Prior to October 6th, 2020,</p> <p>14 had you told the retail board that HCMFA and</p> <p>15 NexPoint have the full faith and backing from</p> <p>16 Jim Dondero?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember in the context in</p> <p>19 which you told the retail board that?</p> <p>20 A. I mean, generally, yes.</p> <p>21 Q. Tell me what you recall.</p> <p>22 A. So we were walking through the</p> <p>23 financials from the advisors; right? So as I</p> <p>24 described to you, you have got HCMFA and NPA.</p> <p>25 And these -- the financials, you know, show</p>

<p style="text-align: right;">Page 190</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 they have liabilities on them that exceed</p> <p>3 assets.</p> <p>4 So the retail board has asked, okay,</p> <p>5 you know, how -- you know, if -- if these</p> <p>6 liabilities come due or they're payable, you</p> <p>7 know, how does that come about?</p> <p>8 And, you know, the response is,</p> <p>9 well, the advisors have the -- the full faith</p> <p>10 and backing from -- from Jim Dondero.</p> <p>11 Q. And how did you know that the</p> <p>12 advisors had the full faith and backing from</p> <p>13 Jim Dondero? What was the basis for that</p> <p>14 statement that you made to the retail board?</p> <p>15 A. I talked to Jim about it at some</p> <p>16 point in the past.</p> <p>17 Q. And did you tell Mr. Dondero that</p> <p>18 you were going to inform the retail board that</p> <p>19 the advisors had his full faith and backing</p> <p>20 before you actually told that to the retail</p> <p>21 board?</p> <p>22 A. I don't recall having that</p> <p>23 conversation.</p> <p>24 Q. Do you recall if you ever informed</p> <p>25 Mr. Dondero that you had disclosed or told the</p>	<p style="text-align: right;">Page 191</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 retail board that the advisors had the full</p> <p>3 faith and backing of Mr. -- Mr. Dondero?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I don't recall discussing that with</p> <p>7 him at the time.</p> <p>8 Q. When you told this to the board, was</p> <p>9 Mr. Dondero participating in the discussion?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Withdrawn. Was it not -- withdrawn.</p> <p>12 Do you recall whether -- when you</p> <p>13 covered this issue with the board, was that in</p> <p>14 a -- a Zoom call or a Webex call? Was it a</p> <p>15 telephone call? Was it in-person? Like where</p> <p>16 were you physically in relation to the board?</p> <p>17 A. I believe I was at home.</p> <p>18 Q. Okay. Can you identify every person</p> <p>19 that you recall who was present for this</p> <p>20 disclosure other than -- other than the board</p> <p>21 members themselves?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't recall everyone on the call.</p> <p>25 Q. Can you identify anybody who was on</p>
<p style="text-align: right;">Page 192</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the call?</p> <p>3 A. Other than the board members?</p> <p>4 Q. Yes.</p> <p>5 A. Lauren Thedford. I mean, there</p> <p>6 are -- there are many -- my section is just one</p> <p>7 of many sections that are just -- you know, as</p> <p>8 you can appreciate, this is a long board</p> <p>9 meeting.</p> <p>10 I can't recall specifically, really</p> <p>11 even generally, or who was on when this was</p> <p>12 discussed. But Lauren was typically on for the</p> <p>13 entire time.</p> <p>14 Q. I apologize if I asked you this, but</p> <p>15 do either of Mr. Norris or Mr. Post hold any</p> <p>16 positions relative to the retail funds?</p> <p>17 A. I think you asked me this already,</p> <p>18 John.</p> <p>19 Q. Okay. I just don't recall. Can you</p> <p>20 just refresh my recollection if I did, in fact,</p> <p>21 ask you the question?</p> <p>22 A. I don't believe -- if we can go</p> <p>23 back. I don't believe Mr. Norris has a title</p> <p>24 at the retail funds. Mr. -- and Mr. Post is</p> <p>25 the CCO of the advisor, the advisors.</p>	<p style="text-align: right;">Page 193</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you know if either of them</p> <p>3 have a position with the retail board -- with</p> <p>4 the retail funds?</p> <p>5 A. I don't believe Mr. Norris has a</p> <p>6 position with the retail funds.</p> <p>7 Q. All right. What about Mr. Post?</p> <p>8 A. Mr. Post is the CCO of the advisors.</p> <p>9 Q. Okay. Does he hold any position --</p> <p>10 A. I don't believe so.</p> <p>11 Q. -- with the retail funds?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Okay.</p> <p>14 A. I don't know if being the CCO for</p> <p>15 the advisor conveys something for the retail</p> <p>16 funds. Again, I am not -- that is the legal</p> <p>17 compliance part of it. I don't know.</p> <p>18 Q. Why did you tell the retail board</p> <p>19 that the advisors have the full faith and</p> <p>20 backing from Mr. Dondero?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. It is -- it is -- it is what has</p> <p>23 been discussed with them prior.</p> <p>24 Q. And were you -- were you trying to</p> <p>25 give them comfort that even though the</p>



<p style="text-align: right;">Page 194</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 liabilities exceeded the assets that the</p> <p>3 advisors would still be able to meet their</p> <p>4 obligations as they become due?</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 MS. DEITSCH-PEREZ: Object form.</p> <p>7 A. I -- I can't -- I don't remember</p> <p>8 specifically the conversation, but generally --</p> <p>9 you know, generally, yes. And that is why --</p> <p>10 but, you know, again, in this email saying, you</p> <p>11 know, I am sure I qualified it with the retail</p> <p>12 board, you know, as I said I like -- you know,</p> <p>13 to my knowledge, that hasn't changed. But,</p> <p>14 again, generally -- generally that is what I</p> <p>15 remember.</p> <p>16 Q. Okay. Do you recall if in the</p> <p>17 advisors' response to the retail board's</p> <p>18 question if the response included any statement</p> <p>19 concerning Mr. Dondero and -- and the full</p> <p>20 faith and backing that he was giving to the</p> <p>21 advisors?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't -- I don't remember</p> <p>25 specifically what was provided.</p>	<p style="text-align: right;">Page 195</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. And I don't really -- I don't really</p> <p>4 remember generally either.</p> <p>5 Q. Okay.</p> <p>6 MR. MORRIS: So -- so, again, I'm</p> <p>7 just going to ask Mr. Rukavina if your</p> <p>8 clients can produce as soon as possible the</p> <p>9 15(c) response, the written response that</p> <p>10 the advisors made, if any, to the board's</p> <p>11 Question No. 2.</p> <p>12 I'm not looking for the whole</p> <p>13 response, but I certainly want the response</p> <p>14 to Question No. 2.</p> <p>15 Q. Do you have a general understanding</p> <p>16 as to the amount by which -- withdrawn.</p> <p>17 Did -- did the assets of --</p> <p>18 withdrawn.</p> <p>19 Did the liabilities of HCMFA exceed</p> <p>20 its assets in 2020?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 MS. DEITSCH-PEREZ: Objection, form.</p> <p>23 A. I believe I have already answered</p> <p>24 that question earlier, I think. I believe I</p> <p>25 said yes.</p>
<p style="text-align: right;">Page 196</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And did the liabilities of</p> <p>3 NexPoint exceed its assets in 2020?</p> <p>4 MS. DEITSCH-PEREZ: Objection to</p> <p>5 form.</p> <p>6 A. I don't believe so.</p> <p>7 Q. Okay. So -- so it was only one of</p> <p>8 the two advisors who had liabilities that</p> <p>9 exceeded the value of the assets.</p> <p>10 Do I have that right?</p> <p>11 MS. DEITSCH-PEREZ: Objection to</p> <p>12 form.</p> <p>13 MS. DANDENEAU: Form.</p> <p>14 A. Yes.</p> <p>15 Q. And do you know, ballpark, the</p> <p>16 amount by which the value of HCMFA's</p> <p>17 liabilities exceeded their assets in 2020?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. I don't -- I don't recall.</p> <p>20 MR. MORRIS: I had specifically</p> <p>21 requested in discovery the audited</p> <p>22 financial reports for both advisors and</p> <p>23 NexPoint. I think I may have gotten one</p> <p>24 for NexPoint but I'm still waiting for the</p> <p>25 balance. And I'm going to renew my request</p>	<p style="text-align: right;">Page 197</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for those documents too.</p> <p>3 Q. Let's go to the next exhibit, which</p> <p>4 is Number 10. So I think it is in your stack,</p> <p>5 Mr. Waterhouse.</p> <p>6 MR. MORRIS: And we can take the one</p> <p>7 down from the screen and put up Number 10</p> <p>8 for everybody.</p> <p>9 (Exhibit 10 marked.)</p> <p>10 Q. And I don't know if you have ever</p> <p>11 seen this before, but I'm really putting it up</p> <p>12 on the screen for purposes of turning to the</p> <p>13 very last page of the document.</p> <p>14 So this is a document that we have</p> <p>15 been -- that we premarked as Exhibit 10. And</p> <p>16 we're turning to the last page of the document,</p> <p>17 which is a document that was filed in the</p> <p>18 adversary proceeding 21-3004. And -- no, I</p> <p>19 apologize, I think we -- right there. Perfect.</p> <p>20 And it is page 31 of 31.</p> <p>21 MR. MORRIS: I think there may have</p> <p>22 been some something erroneously stapled to</p> <p>23 the hard copy that I gave you folks, but</p> <p>24 I'm looking for page 31 of 31 in the</p> <p>25 document that begins with the first page of</p>

<p style="text-align: right;">Page 198</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Exhibit 10.</p> <p>3 Q. Do you have that, Mr. Waterhouse?</p> <p>4 A. I don't have it yet. I'm looking.</p> <p>5 Q. All right. If you look at the top</p> <p>6 right-hand corner, you will see it says page</p> <p>7 hopefully something of 31?</p> <p>8 A. Yes, I've got it now.</p> <p>9 Q. Okay. You have got 31 of 31. You</p> <p>10 can take a moment to read that, if you would</p> <p>11 like.</p> <p>12 A. (Reviewing document.) Okay.</p> <p>13 Q. Have you ever seen this before?</p> <p>14 A. I don't know if I have seen this</p> <p>15 specific document, but, you know, I've --</p> <p>16 I'm -- I'm aware of it.</p> <p>17 Q. And is this the document that you</p> <p>18 had in mind when you sent that email to</p> <p>19 Ms. Thedford that we just looked at where you</p> <p>20 said that Highland had agreed not to make a</p> <p>21 demand upon HCMFA until May 2021?</p> <p>22 A. Honestly, I don't -- it wasn't this</p> <p>23 document. I mean, it's something like this,</p> <p>24 yes. I mean, yes.</p> <p>25 Q. Well --</p>	<p style="text-align: right;">Page 199</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. It is something like this, but I</p> <p>3 don't think it was this specific document.</p> <p>4 Q. Well, but this document does say in</p> <p>5 the last sentence that Highland agreed not to</p> <p>6 seek -- not to demand payment from HCMFA prior</p> <p>7 to May 31, 2021; right?</p> <p>8 A. Yes.</p> <p>9 Q. And are you aware of any other</p> <p>10 document that was ever created pursuant to</p> <p>11 which Highland agreed not to demand payment on</p> <p>12 amounts owed by HCMFA before May 31, 2021?</p> <p>13 A. Hold on. Are you asking, am I aware</p> <p>14 of a document that by HCMFA that basically says</p> <p>15 otherwise?</p> <p>16 Q. No. Let me try again.</p> <p>17 Are you aware of any other document</p> <p>18 pursuant to which -- pursuant to which Highland</p> <p>19 agreed not to make a demand on HCMFA until May</p> <p>20 31st, 2021?</p> <p>21 A. I'm -- I think there was something</p> <p>22 in connection with -- with the -- with the</p> <p>23 audit that basically says the same thing.</p> <p>24 Q. Okay. And do you think that the</p> <p>25 audit is referring to this particular document?</p>
<p style="text-align: right;">Page 200</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't know.</p> <p>3 Q. All right. This document is dated</p> <p>4 April 15, 2019. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And do you remember that the audit</p> <p>7 was completed on June 3rd, 2019?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall that the audited</p> <p>10 financials -- and I'm happy to pull them up if</p> <p>11 you would like, but do you recall that the</p> <p>12 audited financials included a reference to the</p> <p>13 agreement pursuant to which Highland agreed not</p> <p>14 to make a demand until May 31st, 2021?</p> <p>15 A. Yes, I remember.</p> <p>16 Q. And as part of the process, would</p> <p>17 you have expected the corporate accounting team</p> <p>18 to have provided a copy of this document to</p> <p>19 PwC?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. Yes, I would have expected something</p> <p>22 like this, or again, you know, some document</p> <p>23 that basically states -- states the deferral</p> <p>24 till May 31 of 2020.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 201</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. May 31 of 2021, excuse me.</p> <p>3 Q. And this document states the</p> <p>4 deferral that you just described; correct?</p> <p>5 A. It does.</p> <p>6 Q. And this document states the</p> <p>7 deferral that was described in the audited</p> <p>8 financial statements that we looked at before;</p> <p>9 correct?</p> <p>10 A. It does.</p> <p>11 MR. MORRIS: Okay. Can we scroll</p> <p>12 down just a little bit to see who signed on</p> <p>13 behalf of the acknowledgment there.</p> <p>14 Q. Okay. So Mr. Dondero signed this</p> <p>15 document on behalf of both HCMFA and Highland;</p> <p>16 do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Okay. Did you discuss this document</p> <p>19 or the -- withdrawn.</p> <p>20 Did you discuss the concept of the</p> <p>21 deferral with Mr. Dondero in the spring of</p> <p>22 2019?</p> <p>23 A. I think I testified I don't recall.</p> <p>24 Q. Okay. Do you know whose idea it was</p> <p>25 to issue the acknowledgment in this form?</p>



<p style="text-align: right;">Page 202</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall.</p> <p>3 MR. MORRIS: Can we scroll back up</p> <p>4 to the document, please.</p> <p>5 Q. Do you see in the beginning it says,</p> <p>6 reference is made to certain outstanding</p> <p>7 amounts loaned from Highland to HCMFA for</p> <p>8 funding ongoing operations.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And were you aware as the CFO of</p> <p>12 Highland and as the treasurer of HCMFA that as</p> <p>13 of April 15, 2019, Highland had made certain</p> <p>14 loans to HCMFA to fund HCMFA's ongoing</p> <p>15 operations?</p> <p>16 A. Yes.</p> <p>17 Q. And were you aware that those loans</p> <p>18 were payable on demand and remained outstanding</p> <p>19 as of December 31st, 2018?</p> <p>20 A. Yes.</p> <p>21 Q. And were you aware that those</p> <p>22 amounts were payable on demand, and they</p> <p>23 remained outstanding as of April 15, 2019?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p style="text-align: right;">Page 203</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Well, this -- this document dated</p> <p>3 April 15, 2019 says they have been deferred to</p> <p>4 May 31, 2021.</p> <p>5 Q. Right. But I'm just sticking to the</p> <p>6 first paragraph where they refer to the</p> <p>7 outstanding amounts. And in the end it says</p> <p>8 the -- it remained outstanding on December</p> <p>9 31st, 2018, and I think you told me that you</p> <p>10 understood that, and then I'm just trying to</p> <p>11 capture the last piece of it.</p> <p>12 Did you understand that there were</p> <p>13 amounts outstanding from the loan that Highland</p> <p>14 made to HCMFA to fund ongoing operations as of</p> <p>15 April 15th, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. Thank you. Let's look at the next</p> <p>18 sentence. HCMFA expects that it may be unable</p> <p>19 to repay such amounts should they become due</p> <p>20 for the period commencing today and continuing</p> <p>21 through May 31st, 2021.</p> <p>22 Do you see that?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. I do.</p> <p>25 Q. As the CFO -- withdrawn.</p>
<p style="text-align: right;">Page 204</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 As the treasurer of HCMFA, did you</p> <p>3 believe that -- do you believe that statement</p> <p>4 was true and accurate at the time it was</p> <p>5 rendered?</p> <p>6 A. I mean, it -- it -- the answer to</p> <p>7 that is I really didn't have any -- I didn't</p> <p>8 have an opinion really.</p> <p>9 Q. Did you do anything to educate</p> <p>10 yourself in April of 2019 on the issue of</p> <p>11 whether HCMFA could repay the amounts that it</p> <p>12 owed to Highland should they become due?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Did you at any time form any</p> <p>15 opinions as to HCMFA's ability to repay all</p> <p>16 amounts due to Highland should they become due?</p> <p>17 A. Not really. I guess I don't...</p> <p>18 Q. Well, you told the retail board that</p> <p>19 HCMFA's liabilities exceeded their assets in</p> <p>20 2020; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Based on the work that you did to</p> <p>23 prepare for the retail board, did you form any</p> <p>24 view as to whether HCMFA would be unable to</p> <p>25 repay the amounts that it owed to Highland</p>	<p style="text-align: right;">Page 205</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 should they become due?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. I mean, I -- when you look at that,</p> <p>5 to answer you, completely, you know, again,</p> <p>6 if -- the response I gave the retail board was,</p> <p>7 you know, the -- the advice -- HCMFA advisors</p> <p>8 have the -- have the full faith and backing of</p> <p>9 Jim Dondero. So I didn't form an opinion of</p> <p>10 whether the advisor could pay it or not.</p> <p>11 Q. Did you form any view as to whether</p> <p>12 the advisors could repay the amounts that it</p> <p>13 owed to Highland should they become due without</p> <p>14 the full faith and backing of Mr. Dondero?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 MS. DEITSCH-PEREZ: Form.</p> <p>17 A. I mean, if you -- if you -- if you</p> <p>18 take that last statement out, I mean, it would</p> <p>19 be difficult for HCMFA to pay back demand notes</p> <p>20 at that time.</p> <p>21 Q. And it was precisely for that reason</p> <p>22 that you told the retail board that -- that the</p> <p>23 retail -- that the advisors had the full faith</p> <p>24 and backing of Mr. Dondero; correct?</p> <p>25 MS. DANDENEAU: Objection to form.</p>

<p style="text-align: right;">Page 206</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, yes, as the mouthpiece, I</p> <p>3 was relaying information.</p> <p>4 Q. Okay. And you relayed that</p> <p>5 information with the knowledge and approval of</p> <p>6 Mr. Dondero; correct?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. As I stated in the email, I don't</p> <p>10 believe, and I think I testified I don't</p> <p>11 believe I had conversations with Mr. Dondero at</p> <p>12 the time of that board meeting.</p> <p>13 Q. Did you tell the retail board that</p> <p>14 the advisors had the full faith and backing of</p> <p>15 Mr. Dondero without Mr. Dondero's prior</p> <p>16 approval?</p> <p>17 A. Yeah, I -- I -- yes, I'm -- like I</p> <p>18 said, I think I testified earlier, I'm sure I</p> <p>19 qualified it as well.</p> <p>20 Q. What do you mean by that?</p> <p>21 MS. DANDENEAU: Objection to form.</p> <p>22 A. Again -- again, like I said in the</p> <p>23 email, it has the full faith and backing of Jim</p> <p>24 Dondero unless that has changed.</p> <p>25 Q. Actually that is not what you said,</p>	<p style="text-align: right;">Page 207</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so let's put the email back up.</p> <p>3 A. It is -- it is -- it is in the</p> <p>4 email.</p> <p>5 Q. Let's put the email back up. You</p> <p>6 didn't say unless it has changed. You said you</p> <p>7 believe it hasn't changed; right?</p> <p>8 A. Okay. And to my knowledge that</p> <p>9 hasn't changed, that is what it says.</p> <p>10 Q. That's right.</p> <p>11 A. But, again, I mean, that is -- I</p> <p>12 don't know everything. And I'm not in every</p> <p>13 conversation. I'm not -- to presume that I am,</p> <p>14 is -- and you have to put myself -- as you</p> <p>15 started this out, Mr. Morris, I was at home in</p> <p>16 October of 2020 with COVID -- or, you know,</p> <p>17 under these COVID times that we described is</p> <p>18 very difficult.</p> <p>19 We have all been working at home for</p> <p>20 really the first time ever, undergoing</p> <p>21 processes, procedures, control environments</p> <p>22 that have been untested, and there is poor</p> <p>23 communication.</p> <p>24 So I am relaying, as I'm telling you</p> <p>25 now, what is in the email. And unless</p>
<p style="text-align: right;">Page 208</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 something has changed -- to my knowledge, it</p> <p>3 hasn't changed, but it could have changed.</p> <p>4 Q. When you say that the advisors have</p> <p>5 the full faith and backing from Mr. Dondero,</p> <p>6 did you intend to convey that, to the extent</p> <p>7 the advisors were unable to satisfy their</p> <p>8 obligations as they become due, Mr. Dondero</p> <p>9 would do it for them?</p> <p>10 MS. DANDENEAU: Object to the form.</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 And, John, we have given you a lot</p> <p>14 of leeway here but this does not seem</p> <p>15 relevant to this case. You seem sort of</p> <p>16 taking a complete sort of diversion into</p> <p>17 the allegations and the complaint just</p> <p>18 filed on Friday, and so I would ask you to</p> <p>19 move on because --</p> <p>20 MR. MORRIS: And I will tell you --</p> <p>21 I will tell you that I have never read that</p> <p>22 complaint cover-to-cover. I have nothing</p> <p>23 to do with the prosecution of those claims.</p> <p>24 And this issue that we're talking about</p> <p>25 right now is related solely to the</p>	<p style="text-align: right;">Page 209</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory notes that your clients refuse</p> <p>3 to pay.</p> <p>4 So I'm going to continue to ask my</p> <p>5 questions, and I would ask the court</p> <p>6 reporter to read back my last question.</p> <p>7 (Record read.)</p> <p>8 MS. DEITSCH-PEREZ: And then I</p> <p>9 believe there were objections to form.</p> <p>10 Q. You can answer the question.</p> <p>11 A. Yes.</p> <p>12 Q. Thank you very much, sir.</p> <p>13 MR. MORRIS: Can we go back to the</p> <p>14 other document, please?</p> <p>15 Q. Mr. Waterhouse, do you know if this</p> <p>16 document was ever shared with the retail board?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you ever share it with the</p> <p>19 retail board?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you ever tell the retail board</p> <p>22 about the substance of this document?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you ever tell the retail board</p> <p>25 that Highland had agreed not to make a demand</p>

<p style="text-align: right;">Page 210</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 against HCMFA until May 2021?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you know whether anybody on</p> <p>5 behalf of the advisors ever informed the retail</p> <p>6 board that Highland had agreed on April 15,</p> <p>7 2019, not to make a demand against HCMFA under</p> <p>8 the promissory notes?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you instruct Ms. Thedford or</p> <p>11 anybody else responding to the retail board's</p> <p>12 15(c) inquiry to disclose this document?</p> <p>13 A. Did I instruct Ms. Thedford or</p> <p>14 anyone else to -- to -- to produce this, to</p> <p>15 disclose this document? Is that what you -- I</p> <p>16 just want to make sure.</p> <p>17 Q. Uh-huh.</p> <p>18 A. Yeah, I don't -- I don't recall.</p> <p>19 Q. Did you instruct anybody to inform</p> <p>20 the retail board, in response to their question</p> <p>21 as part of the 15(c) process, to -- to tell the</p> <p>22 retail board about Highland's agreement not to</p> <p>23 make a demand until 2021?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 211</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever inform PwC that HCMFA's</p> <p>3 liabilities exceeded its assets?</p> <p>4 MS. DANDENEAU: Object to the form.</p> <p>5 A. I don't -- I don't think I told</p> <p>6 them. I mean, they -- they audited the</p> <p>7 financial statements.</p> <p>8 Q. Did -- do you know if anybody on</p> <p>9 behalf of Highland ever informed</p> <p>10 PricewaterhouseCoopers that HCMFA may be unable</p> <p>11 to repay amounts owing to Highland, should they</p> <p>12 become due?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 A. Yes. Again, I think I testified</p> <p>15 earlier that -- that this was communicated to</p> <p>16 the auditors.</p> <p>17 Q. Ideally --</p> <p>18 A. I don't know who exactly did that.</p> <p>19 I don't recall doing it, but, yeah, it was --</p> <p>20 it was communicated. And that is why -- I</p> <p>21 mean, there is a disclosure in the financial</p> <p>22 statements; right?</p> <p>23 Q. There is, and that disclosure</p> <p>24 relates to the last sentence of this document;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 212</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall looking in the</p> <p>4 document and seeing anything that was disclosed</p> <p>5 with respect to the sentence above that?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether anybody on</p> <p>8 behalf of Highland ever informed</p> <p>9 PricewaterhouseCoopers that HCMFA expects that</p> <p>10 it may be unable to repay amounts due and owing</p> <p>11 to Highland should they become due?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. I think that is the third time.</p> <p>14 A. I don't recall. Again, as I said,</p> <p>15 we -- all of this was given to the auditors.</p> <p>16 Q. Do you know if Highland received</p> <p>17 anything of value in exchange for its agreement</p> <p>18 not to demand payment on amounts owed by HCMFA</p> <p>19 prior to May 31st, 2021?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form. That is the second time.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. I have answered this question.</p> <p>24 MR. RUKAVINA: Hold on. Object to</p> <p>25 legal conclusion. Go ahead.</p>	<p style="text-align: right;">Page 213</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I have answered this question</p> <p>3 before.</p> <p>4 Q. And the answer was no?</p> <p>5 A. I'm not aware.</p> <p>6 Q. Now, this acknowledgment can't</p> <p>7 possibly apply to the two notes that you signed</p> <p>8 on behalf of HCMFA because those notes were</p> <p>9 signed on May 2nd and May 3rd, 2019; is that</p> <p>10 right?</p> <p>11 MS. DANDENEAU: Objection to form.</p> <p>12 A. Unless there is a drafting error.</p> <p>13 Q. Okay. Are you aware of a drafting</p> <p>14 error?</p> <p>15 A. I'm not aware. I didn't -- I wasn't</p> <p>16 part of -- I didn't sign this note or this</p> <p>17 acknowledgment. I didn't draft it.</p> <p>18 Q. But you do see it is dated April 15,</p> <p>19 2019; right?</p> <p>20 A. Yes.</p> <p>21 Q. And this was a document that was</p> <p>22 actually included by the advisors in a pleading</p> <p>23 they filed with the Court; right?</p> <p>24 MR. RUKAVINA: Well, I don't know</p> <p>25 that so I object to form.</p>

<p style="text-align: right;">Page 214</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Let's go to the first page of</p> <p>3 the document and just confirm that.</p> <p>4 MR. AIGEN: Mr. Morris, I just note</p> <p>5 that you already said there was some error</p> <p>6 with the document that is listed as</p> <p>7 exhibit --</p> <p>8 MR. MORRIS: No. No, no, no.</p> <p>9 MS. DEITSCH-PEREZ: Oh, okay.</p> <p>10 MR. MORRIS: What I said is that</p> <p>11 there is a few pages that were mistakenly</p> <p>12 stapled to the end of the document.</p> <p>13 MS. DEITSCH-PEREZ: Okay.</p> <p>14 MR. MORRIS: There is no problem</p> <p>15 with this document.</p> <p>16 MS. DEITSCH-PEREZ: And just so</p> <p>17 we're clear that the document -- the pages</p> <p>18 that start with defendant's amended answer</p> <p>19 are not intended to be part of this</p> <p>20 document?</p> <p>21 MR. MORRIS: That's correct.</p> <p>22 MS. DEITSCH-PEREZ: And that the --</p> <p>23 but it is your representation that the rest</p> <p>24 of the document is -- is -- is correct</p> <p>25 because we don't -- we don't have any way</p>	<p style="text-align: right;">Page 215</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of verifying that, we're just --</p> <p>3 MR. MORRIS: You do, actually. You</p> <p>4 could just go to Docket No. 21-3004.</p> <p>5 MS. DEITSCH-PEREZ: If you want to</p> <p>6 stop this deposition so we can go and pull</p> <p>7 that document up, we're happy to do it. So</p> <p>8 I am just asking you for your</p> <p>9 representation.</p> <p>10 MR. MORRIS: Sure. I gave that.</p> <p>11 MS. DEITSCH-PEREZ: Okay.</p> <p>12 Q. So do you see that this is a</p> <p>13 document that was actually filed with the Court</p> <p>14 by Highland Capital Management Fund Advisors?</p> <p>15 A. No. I get with the first page in</p> <p>16 the section. Maybe I'm looking at the wrong</p> <p>17 thing. It says, Highland Capital Management.</p> <p>18 Q. Don't worry about it. Don't worry</p> <p>19 about it.</p> <p>20 A. Maybe I went back -- okay.</p> <p>21 MR. MORRIS: All right. Can we put</p> <p>22 up on the screen Exhibit 2.</p> <p>23 (Exhibit 2 marked.)</p> <p>24 MR. MORRIS: I think it is</p> <p>25 Exhibit 1.</p>
<p style="text-align: right;">Page 216</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: I'm sorry, John, did</p> <p>3 you say Exhibit 2 or Exhibit 1?</p> <p>4 MR. MORRIS: It is Exhibit 2 in the</p> <p>5 binders so it is premarked Exhibit 2. And</p> <p>6 now I'm asking -- right there -- going to</p> <p>7 Exhibit 1 to the document that was marked</p> <p>8 as Exhibit 2.</p> <p>9 MS. DANDENEAU: Got it. In the</p> <p>10 binder there is no --</p> <p>11 MS. DEITSCH-PEREZ: There is no</p> <p>12 Exhibit 1.</p> <p>13 MR. MORRIS: All right. So look at</p> <p>14 the one on the screen.</p> <p>15 Q. Do you see, Mr. Waterhouse, that</p> <p>16 this is a promissory note dated May 31st, 2017,</p> <p>17 in the approximate amount of \$30.7 million?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see that the maker of the</p> <p>20 note is NexPoint?</p> <p>21 A. Yes.</p> <p>22 Q. And that Highland is the payee; is</p> <p>23 that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And do you see in Paragraph 2</p>	<p style="text-align: right;">Page 217</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this is an annual installment note?</p> <p>3 A. Can you scroll down.</p> <p>4 Q. Sure.</p> <p>5 MR. MORRIS: Can we scroll down --</p> <p>6 yeah, there you go.</p> <p>7 A. Right there, yeah. Yes.</p> <p>8 MR. MORRIS: And can we scroll down</p> <p>9 to the signature line.</p> <p>10 Q. And do you recognize that as</p> <p>11 Mr. Dondero's signature?</p> <p>12 A. Yes.</p> <p>13 Q. And is this the promissory note that</p> <p>14 we talked about earlier where NexPoint had made</p> <p>15 certain payments in the aggregate amount of</p> <p>16 about 6 to \$7 million against principal and</p> <p>17 interest?</p> <p>18 A. I don't recall discussing the</p> <p>19 aggregate principal amounts of 6 to \$7 million,</p> <p>20 but -- so I don't -- I don't recall that prior</p> <p>21 discussion with those amounts.</p> <p>22 Q. All right. Let's take a look.</p> <p>23 NexPoint always included this promissory note</p> <p>24 as a liability on its audited financial</p> <p>25 statements; right?</p>

<p style="text-align: right;">Page 218</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And NexPoint had its financial</p> <p>4 statements audited; isn't that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And was the process of NexPoint's</p> <p>7 audit similar to the process you described</p> <p>8 earlier for Highland and HCMFA?</p> <p>9 A. Yes, it is similar.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: Can we put up</p> <p>12 NexPoint's audited financials and let</p> <p>13 everybody know what exhibit number it is,</p> <p>14 La Asia?</p> <p>15 MS. CANTY: It is going to be</p> <p>16 Exhibit 46.</p> <p>17 (Exhibit 46 marked.)</p> <p>18 Q. And do you see, sir, that we've put</p> <p>19 up NexPoint Advisors' consolidated financial</p> <p>20 statements and supplemental information for the</p> <p>21 period ending December 31st, 2019?</p> <p>22 A. Yes.</p> <p>23 Q. Did you participate in the process</p> <p>24 whereby these audited financial statements were</p> <p>25 issued?</p>	<p style="text-align: right;">Page 219</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I didn't participate directly, as</p> <p>3 I've described before, about the -- the team</p> <p>4 performing the audit.</p> <p>5 Q. Do you recall when the audit of</p> <p>6 NexPoint's financial statements for the period</p> <p>7 ending December 31st, 2019 was completed?</p> <p>8 A. Yes.</p> <p>9 Q. And when do you recall it being</p> <p>10 completed?</p> <p>11 A. In January of 2021.</p> <p>12 Q. Do you know why the 2019 audit</p> <p>13 report wasn't completed until January of 2021?</p> <p>14 A. Yes.</p> <p>15 Q. Why was the NexPoint audit report</p> <p>16 for the period ending 12/31/19 not completed</p> <p>17 until January 2021?</p> <p>18 A. Because we had to deal with working</p> <p>19 from home from -- with COVID, and on top of all</p> <p>20 of our daily responsibilities and job duties</p> <p>21 at -- at providing -- at Highland providing</p> <p>22 services to NexPoint, we had to do all of this</p> <p>23 extra work for a bankruptcy that was filed in</p> <p>24 October of 2019.</p> <p>25 MR. MORRIS: Can we go to the</p>
<p style="text-align: right;">Page 220</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 balance sheet on page 3? Okay. Stop right</p> <p>3 there.</p> <p>4 Q. Do you see under the liabilities</p> <p>5 section, the last item is note payable to</p> <p>6 affiliate?</p> <p>7 A. Yes.</p> <p>8 Q. And is that the note that we just</p> <p>9 looked at?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 Q. Withdrawn.</p> <p>12 Is that the approximately</p> <p>13 \$30 million note that we just looked at that</p> <p>14 was dated from 2017?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I believe no.</p> <p>17 Q. Okay. You're not aware of any other</p> <p>18 note that was outstanding from NexPoint to</p> <p>19 Highland as of the end of the year 2019, other</p> <p>20 than that one \$30 million note; right?</p> <p>21 A. I don't recall.</p> <p>22 Q. And as of the end of 2019, the</p> <p>23 principal amount that was due on the note was</p> <p>24 approximately \$23 million; right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p style="text-align: right;">Page 221</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 form.</p> <p>3 A. Approximately.</p> <p>4 Q. And does that refresh your</p> <p>5 recollection that between the time the note was</p> <p>6 executed and the end of 2019, that NexPoint had</p> <p>7 paid down approximately \$7 million?</p> <p>8 A. Yes. If we are just doing the math,</p> <p>9 yes.</p> <p>10 Q. Okay. Did NexPoint complete its</p> <p>11 audit from 2020?</p> <p>12 A. Sorry, you kind of broke up. Do</p> <p>13 NexPoint complete?</p> <p>14 Q. The audit of its financial</p> <p>15 statements for the period ending December 31st,</p> <p>16 2020?</p> <p>17 A. No.</p> <p>18 Q. No, it's not complete?</p> <p>19 A. No, it is not complete.</p> <p>20 Q. Did HCMFA complete its audit for the</p> <p>21 year ending December 31st, 2020?</p> <p>22 A. No.</p> <p>23 MR. MORRIS: Can we go to page 15,</p> <p>24 please, the paragraph at the bottom.</p> <p>25 Q. Do you see that NexPoint has</p>



<p style="text-align: right;">Page 222</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 included under notes payable to Highland a</p> <p>3 reference to the amounts that were outstanding</p> <p>4 as of the year-end 2019 under the note that we</p> <p>5 looked at just a moment ago?</p> <p>6 A. Yes. Are you talking about the</p> <p>7 second paragraph?</p> <p>8 Q. I'm actually talking about first</p> <p>9 paragraph. Do you understand that the first</p> <p>10 paragraph is a reference to the 2017 note, and</p> <p>11 the amounts that were -- the principal amount</p> <p>12 that was outstanding as of the end of 2019?</p> <p>13 MS. DANDENEAU: Objection to form.</p> <p>14 John, do you mean the first paragraph of</p> <p>15 that page?</p> <p>16 MR. MORRIS: No, the first paragraph</p> <p>17 under notes payable to Highland.</p> <p>18 A. Yeah, I see the paragraph, and</p> <p>19 again, this is what I answered earlier. I</p> <p>20 believe so, just because I don't -- again, this</p> <p>21 is a number in a balance sheet, and without</p> <p>22 matching it up and seeing the detail with the</p> <p>23 schedule like I kind of talked about for</p> <p>24 Highland's financial statements, it is a little</p> <p>25 bit more difficult to tie everything in</p>	<p style="text-align: right;">Page 223</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 perfectly together.</p> <p>3 Q. Okay. But you're not aware of any</p> <p>4 note that was outstanding at the end of 2019</p> <p>5 from NexPoint to Highland other than whatever</p> <p>6 principal was still due and owing under the</p> <p>7 \$30 million note issued in 2017; correct?</p> <p>8 A. Well, it -- I don't -- there is</p> <p>9 reference in the second paragraph. I don't --</p> <p>10 I don't -- I don't recall what that is</p> <p>11 referring to, so I don't -- I don't know.</p> <p>12 Q. Well, if you listen carefully to my</p> <p>13 question, right, I'm asking about notes that</p> <p>14 were outstanding at the end of 2019, and if we</p> <p>15 look at the paragraph you just referred to, it</p> <p>16 says that during the year there were new notes</p> <p>17 issued totaling \$1.5 million, but by the end of</p> <p>18 the year, no principal or interest was</p> <p>19 outstanding on the notes.</p> <p>20 Do you see that?</p> <p>21 A. Oh, I do, yes.</p> <p>22 Q. So does that refresh your</p> <p>23 recollection that there were no notes</p> <p>24 outstanding from NexPoint to Highland other</p> <p>25 than the principal remaining under the original</p>
<p style="text-align: right;">Page 224</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$30 million 2017 note that we looked at a</p> <p>3 moment ago?</p> <p>4 A. Well, we're at the bottom of the</p> <p>5 page. Is there anything on page 16?</p> <p>6 Q. That is a fair question, sure. That</p> <p>7 is it.</p> <p>8 A. Okay. So it appears that that is</p> <p>9 the only note that is detailed in the notes in</p> <p>10 the financial statement.</p> <p>11 Q. And you don't have any memory of any</p> <p>12 other note other than the 2017 note, right,</p> <p>13 being outstanding as of the end of the year?</p> <p>14 A. I deal with thousands of</p> <p>15 transactions every year. I don't really have a</p> <p>16 very specific memory for what exactly was</p> <p>17 outstanding.</p> <p>18 MR. MORRIS: Why don't we take a</p> <p>19 break now. We've been going for a little</p> <p>20 while. It's 3:26. Let's come back at</p> <p>21 3:40.</p> <p>22 VIDEOGRAPHER: We're going off the</p> <p>23 record at 3:26 p.m.</p> <p>24 (Recess taken 3:26 p.m. to 3:39 p.m.)</p> <p>25 VIDEOGRAPHER: We are going back on</p>	<p style="text-align: right;">Page 225</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the record at 3:39 p.m.</p> <p>3 Q. All right. Mr. Waterhouse, we -- I</p> <p>4 don't think we have a lot more here.</p> <p>5 To the best of your knowledge and</p> <p>6 recollection, were all affiliate loans and all</p> <p>7 loans made to Mr. Dondero recorded on</p> <p>8 Highland's books and records as assets of</p> <p>9 Highland?</p> <p>10 MS. DANDENEAU: Object to the form,</p> <p>11 asked and answered.</p> <p>12 A. To my knowledge, yes.</p> <p>13 Q. Okay. Can you recall any loan to</p> <p>14 any affiliate or Mr. Dondero that was not</p> <p>15 recorded on Highland's books and records as an</p> <p>16 asset?</p> <p>17 A. Like during my time as CFO? I don't</p> <p>18 recall.</p> <p>19 Q. How about after the time that you</p> <p>20 were CFO? Did you recall that there was a loan</p> <p>21 by Highland to an affiliate or to Mr. Dondero</p> <p>22 that hadn't been previously recorded on</p> <p>23 Highland's books as an asset?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. I guess I don't understand the</p>

<p style="text-align: right;">Page 226</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 question. I left Highland as of -- I'm not</p> <p>3 aware of -- I left Highland in February --</p> <p>4 probably the last day of February of 2021.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not -- I'm not aware of any --</p> <p>7 I'm not aware of anything past that date.</p> <p>8 Q. Okay. While you were the CFO at</p> <p>9 Highland, did Highland prepare in the ordinary</p> <p>10 course of business a document that reported</p> <p>11 operating results on a monthly basis?</p> <p>12 A. Yes.</p> <p>13 Q. And are you generally familiar with</p> <p>14 the monthly operating reports?</p> <p>15 A. Yeah. You are referring to the</p> <p>16 reports that we filed to the Court every month?</p> <p>17 Q. I apologize, I'm not. I'm taking</p> <p>18 you back to the pre-petition period. There was</p> <p>19 a report that I have seen that I'm going to</p> <p>20 show you, but I'm just asking for your</p> <p>21 knowledge.</p> <p>22 MR. MORRIS: Let's put it up on the</p> <p>23 screen, Exhibit 39.</p> <p>24 (Exhibit 39 marked.)</p> <p>25 Q. Do you see this is a document that</p>	<p style="text-align: right;">Page 227</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is called operating results?</p> <p>3 A. Yeah, that's the title of it.</p> <p>4 Q. Okay. And was a report of operating</p> <p>5 results prepared by Highland on a monthly basis</p> <p>6 during the time that you served as CFO?</p> <p>7 A. No.</p> <p>8 Q. Are you familiar with a document of</p> <p>9 this type? And we can certainly look at the</p> <p>10 next page or two to refresh your recollection.</p> <p>11 A. I'm just looking at the title. I</p> <p>12 don't really -- again, as I discussed before, I</p> <p>13 don't have any records or documents or emails</p> <p>14 or appointments or anything that I was able to</p> <p>15 use prior to -- prior to this deposition, so</p> <p>16 I'm doing the best I can.</p> <p>17 Q. Okay. You don't need to apologize.</p> <p>18 I'm just asking you if you are familiar with</p> <p>19 the document called Operating Results that was</p> <p>20 prepared on a monthly basis at Highland?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 Q. If you're not, you're not.</p> <p>24 A. I don't believe this was prepared on</p> <p>25 a monthly basis.</p>
<p style="text-align: right;">Page 228</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you see that this one</p> <p>3 is -- is dated February 2018?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have -- do you believe --</p> <p>6 have you ever seen a document that was</p> <p>7 purporting to report operating results for</p> <p>8 Highland?</p> <p>9 MS. DANDENEAU: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And when you say that you</p> <p>12 don't believe it was produced on a monthly</p> <p>13 basis, was it produced on any periodic bases to</p> <p>14 the best of your recollection?</p> <p>15 A. I believe it was -- it was prepared</p> <p>16 on an annual basis.</p> <p>17 Q. Okay.</p> <p>18 MR. MORRIS: Can we look at the next</p> <p>19 page.</p> <p>20 Q. Do you see that there is a statement</p> <p>21 here called: Significant items impacting</p> <p>22 HCMLP's balance sheet?</p> <p>23 And it is dated February 2018.</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall that there was a</p>	<p style="text-align: right;">Page 229</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 report that Highland prepared that identified</p> <p>3 significant items impacting the balance sheet?</p> <p>4 A. A report that was prepared.</p> <p>5 Q. Let me ask a better question: Did</p> <p>6 Highland prepare reports to the best of your</p> <p>7 recollection that identified significant items</p> <p>8 that impacted its balance sheet?</p> <p>9 A. Well, so Highland prepared a -- a</p> <p>10 monthly close package. And maybe I'm</p> <p>11 getting -- and -- and maybe change names at one</p> <p>12 time or maybe I'm just -- again, just</p> <p>13 misremembering -- but in that, yes, there is a</p> <p>14 page that would detail just changes in -- you</p> <p>15 know, just changes month over month on the</p> <p>16 balance sheet.</p> <p>17 Q. Okay. And maybe it is my fault.</p> <p>18 Maybe I didn't know the proper name for it.</p> <p>19 But let's use the phrase "monthly close</p> <p>20 package."</p> <p>21 Did Highland prepare a monthly close</p> <p>22 package in the ordinary course of business</p> <p>23 during the time that you served as CFO?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 230</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did the monthly close package</p> <p>3 that Highland prepared include information</p> <p>4 concerning significant items that impacted</p> <p>5 Highland's balance sheet?</p> <p>6 A. Yes, it had a page like that is --</p> <p>7 that is on the screen that detailed items</p> <p>8 like -- of that nature.</p> <p>9 Q. And do you know who -- was there</p> <p>10 anybody at Highland who was responsible for</p> <p>11 overseeing the preparation of the monthly</p> <p>12 reporting package?</p> <p>13 A. That would have been -- again, it</p> <p>14 varies over time during my tenure as CFO.</p> <p>15 It -- it varied over -- over time, but -- but</p> <p>16 typically a -- a corporate accounting manager.</p> <p>17 Q. And who were the corporate</p> <p>18 accounting managers during your tenure as CFO?</p> <p>19 A. It would have been Dave Klos and</p> <p>20 Kristin Hendrix.</p> <p>21 Q. And did the corporate accounting</p> <p>22 manager deliver to you drafts of the monthly</p> <p>23 close package before it was finalized?</p> <p>24 A. Sometimes.</p> <p>25 Q. Was that the practice even if there</p>	<p style="text-align: right;">Page 231</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were exceptions to the practice?</p> <p>3 A. The practice meaning that they</p> <p>4 sometimes lured them to me?</p> <p>5 Q. That that was the expectation even</p> <p>6 if circumstances prevented that from happening</p> <p>7 from time to time.</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. I -- I would say it started out that</p> <p>11 way but over the years it -- it was not</p> <p>12 enforced.</p> <p>13 Q. Okay. So you were -- you reviewed</p> <p>14 and approved monthly -- monthly reporting</p> <p>15 packages for a certain period of time and then</p> <p>16 over time you stopped doing that.</p> <p>17 Do I have that right?</p> <p>18 MS. DANDENEAU: Objection to form.</p> <p>19 A. Yes, I mean, if you're talking about</p> <p>20 a formal meeting where we sit down and go</p> <p>21 through and approve it. I would say that was</p> <p>22 standard practice a decade -- you know, early</p> <p>23 on. And as time went on that -- that -- that</p> <p>24 practice wasn't followed.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 232</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. And, quite frankly, I don't even</p> <p>3 know if these were -- these were sent to me</p> <p>4 even in any capacity.</p> <p>5 Q. What was the purpose of preparing</p> <p>6 the monthly reporting package -- withdrawn.</p> <p>7 What was the purpose of preparing</p> <p>8 the monthly close package?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. The -- the original purpose was so</p> <p>12 that it would just -- it would be a report that</p> <p>13 was reviewed monthly with senior management.</p> <p>14 Q. Who was included in the idea of</p> <p>15 senior management?</p> <p>16 A. You know, I think originally when</p> <p>17 this was conceived that would have been like</p> <p>18 Jim Dondero and Mark Okada.</p> <p>19 Q. Were monthly reporting -- withdrawn.</p> <p>20 Were monthly close packages prepared</p> <p>21 to the best of your knowledge until the time</p> <p>22 you left Highland?</p> <p>23 A. To my knowledge -- I don't know,</p> <p>24 actually. I mean, to my knowledge, I believe</p> <p>25 it was being -- that was still being done. I</p>	<p style="text-align: right;">Page 233</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't know because, again, I wasn't reviewing</p> <p>3 them. I hadn't reviewed a close package for --</p> <p>4 for a long time. But I believe the standard</p> <p>5 practice that was still being carried out.</p> <p>6 Q. Did you ever have any discussions</p> <p>7 with the debtor's independent board concerning</p> <p>8 any promissory notes that were issued by any of</p> <p>9 the affiliates or Mr. Dondero?</p> <p>10 A. I can't -- I can't -- I can't recall</p> <p>11 specifically.</p> <p>12 Q. Did you speak with the independent</p> <p>13 board from time to time?</p> <p>14 A. Yes, from -- from -- from time to</p> <p>15 time I had discussions with the independent</p> <p>16 board members, you know, either -- either, you</p> <p>17 know, by themselves or wholly, you know, as --</p> <p>18 as a -- as a combined work.</p> <p>19 Q. Okay. Before we talk about</p> <p>20 Mr. Seery, do you recall ever having a</p> <p>21 conversation with Mr. Nelms or Mr. Dubel</p> <p>22 concerning any promissory note that was</p> <p>23 rendered by one of the affiliates or</p> <p>24 Mr. Dondero to Highland?</p> <p>25 A. I don't recall any conversations</p>

<p style="text-align: right;">Page 234</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically.</p> <p>3 Q. Do you know if the topic was ever</p> <p>4 discussed, even if you don't remember it</p> <p>5 specifically?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. It -- it -- it may have. I don't</p> <p>8 know. I don't recall.</p> <p>9 Q. Do you recall ever discussing any</p> <p>10 promissory note issued by any of the affiliates</p> <p>11 or Mr. Dondero with James Seery?</p> <p>12 A. I don't -- I don't recall</p> <p>13 specifically.</p> <p>14 Q. Do you recall generally ever</p> <p>15 discussing the topic of promissory notes issued</p> <p>16 by any of the affiliates or Mr. Dondero to</p> <p>17 Highland with Mr. Seery?</p> <p>18 A. Nothing -- nothing is really jumping</p> <p>19 out at me.</p> <p>20 Q. Do you recall if you ever told</p> <p>21 Mr. Seery that any of the affiliates or</p> <p>22 Mr. Dondero didn't have an obligation to pay</p> <p>23 all amounts due and owing under their notes?</p> <p>24 A. I don't recall having that</p> <p>25 conversation.</p>	<p style="text-align: right;">Page 235</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you ever tell Mr. Seery that you</p> <p>3 had any reason to believe that the amounts</p> <p>4 reflected in the notes issued by the affiliates</p> <p>5 and Mr. Dondero were invalid for any reason?</p> <p>6 A. I don't -- I don't recall.</p> <p>7 Q. Did you tell Mr. Dondero -- did you</p> <p>8 tell Mr. Seery that you thought the promissory</p> <p>9 notes issued by the advisors and Mr. Dondero</p> <p>10 that were outstanding as of the petition date</p> <p>11 were assets of the estate?</p> <p>12 A. I don't recall having a specific</p> <p>13 conversation about those -- you know, those</p> <p>14 notes outstanding as -- as of the petition date</p> <p>15 being assets on the estate. I mean, we put</p> <p>16 together -- you know, they're in the books and</p> <p>17 records of the financial statements. I don't</p> <p>18 recall having a specific conversation.</p> <p>19 Q. Did you ever prepare any documents</p> <p>20 that were delivered to Mr. Seery that concerned</p> <p>21 the promissory notes issued by any of the</p> <p>22 affiliates or Mr. Dondero?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. Did I produce any that concerned --</p> <p>25 you mean did I just -- did I give Mr. Seery</p>
<p style="text-align: right;">Page 236</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 anything that -- that said I have concerns over</p> <p>3 these notes?</p> <p>4 Q. No. Let me try again. Maybe it was</p> <p>5 my question.</p> <p>6 Did you ever give Mr. Seery any</p> <p>7 information concerning any of the notes that</p> <p>8 were issued by any of the affiliates or</p> <p>9 Mr. Dondero?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I don't recall if I did or not. I</p> <p>12 don't -- I don't remember. I mean, you have my</p> <p>13 emails. You may have asked. Again, I don't --</p> <p>14 I don't know.</p> <p>15 MR. MORRIS: Can we put up the</p> <p>16 document that has been premarked as Exhibit</p> <p>17 39?</p> <p>18 MS. DANDENEAU: John, that is this</p> <p>19 document, isn't it?</p> <p>20 MR. MORRIS: Oh, yeah, it might be,</p> <p>21 as a matter of fact. Let's go to Number</p> <p>22 40.</p> <p>23 (Exhibit 40 marked.)</p> <p>24 Q. During the bankruptcy,</p> <p>25 Mr. Waterhouse, did you prepare documents that</p>	<p style="text-align: right;">Page 237</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 were filed with the bankruptcy court?</p> <p>3 A. I didn't -- I didn't prepare them</p> <p>4 personally.</p> <p>5 Q. Did people prepare them under your</p> <p>6 direction?</p> <p>7 A. Yes. There were members of the team</p> <p>8 that prepared them, and they worked in -- you</p> <p>9 know, there were members of DSI that were</p> <p>10 involved in the process as well.</p> <p>11 Q. To the best of your knowledge, did</p> <p>12 DSI rely on the employees of Highland for the</p> <p>13 information that they used to prepare the</p> <p>14 bankruptcy filings?</p> <p>15 A. Yes. The books and records were</p> <p>16 with the Highland personnel.</p> <p>17 Q. Okay. And do you see on the screen</p> <p>18 here, there is a document that we have marked</p> <p>19 as Exhibit 40 that is -- that is titled Summary</p> <p>20 of Assets and Liabilities?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Okay. And do you recall reviewing</p> <p>23 any summary of assets and liabilities before it</p> <p>24 was filed with the bankruptcy court?</p> <p>25 A. Yes, I recall reviewing this at a</p>

<p style="text-align: right;">Page 238</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 high level.</p> <p>3 Q. And did you believe that it was</p> <p>4 accurate at the time it was filed?</p> <p>5 A. I didn't have any other reason to</p> <p>6 believe otherwise.</p> <p>7 Q. Okay. Do you see that the total</p> <p>8 value of all properties listed in Part 1 is</p> <p>9 approximately \$410 million?</p> <p>10 MS. DEITSCH-PEREZ: Objection to</p> <p>11 form.</p> <p>12 A. Yes, it is in 1c.</p> <p>13 Q. Yes.</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Okay. If we go to the second page,</p> <p>16 now I think I may just have excerpts here, just</p> <p>17 so everybody is clear, but if we scroll down to</p> <p>18 the second page, you will see that there is</p> <p>19 a -- a little further. There you go. You will</p> <p>20 see there is a reference to Item 71, notes</p> <p>21 receivable.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And that was a reference to the</p> <p>25 notes receivable from the affiliates and</p>	<p style="text-align: right;">Page 239</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, among others; is that right?</p> <p>3 MS. DANDENEAU: Objection to form.</p> <p>4 A. Yes. The affiliate notes and the</p> <p>5 Dondero notes were in this amount, but they</p> <p>6 weren't -- again, like you said, and among</p> <p>7 others.</p> <p>8 Q. Okay. We will look at the</p> <p>9 specificity because I'm not playing gaming</p> <p>10 here, but do you know if the \$150 million of</p> <p>11 notes receivable was included within the</p> <p>12 \$410 million of total value of the debtor's</p> <p>13 assets?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I -- I -- I believe so.</p> <p>16 Q. Right. And so is it fair to say</p> <p>17 that as of the date this document was prepared,</p> <p>18 the notes receivable were more than one-third</p> <p>19 of the value of the debtor's assets?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 MS. DANDENEAU: Object to the form.</p> <p>23 A. Again, if you are just taking the</p> <p>24 math, 150 divided by whatever the \$400 million</p> <p>25 number is above, then yes, you get there.</p>
<p style="text-align: right;">Page 240</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay.</p> <p>3 A. You know, but as of the time of this</p> <p>4 filing, that is what was put in this filing,</p> <p>5 right, but, you know, I mean, numbers --</p> <p>6 numbers change, facts and circumstances change.</p> <p>7 Q. But as the CFO of Highland, the</p> <p>8 debtor in bankruptcy, did you believe that this</p> <p>9 number accurately reflected the total amount</p> <p>10 due under the notes receivable?</p> <p>11 A. That is what we had in our books and</p> <p>12 records.</p> <p>13 Q. Okay. And did you believe as the</p> <p>14 CFO that the books and records accurately</p> <p>15 reported the then value of the debtor's assets?</p> <p>16 MS. DANDENEAU: Objection to form.</p> <p>17 A. We didn't -- as part of this filing,</p> <p>18 there was no fair value measurement or</p> <p>19 anything. These were just accounting entries</p> <p>20 for the promissory notes. There is no analysis</p> <p>21 for impairment or fair market value adjustments</p> <p>22 or anything of that nature. This is purely</p> <p>23 taking numbers and putting them in our form.</p> <p>24 Q. Did you do any impairment analysis</p> <p>25 at any time while you were employed by</p>	<p style="text-align: right;">Page 241</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland?</p> <p>3 A. Yes, we did do impairment analysis</p> <p>4 on -- on assets.</p> <p>5 Q. Okay. Did you ever do an impairment</p> <p>6 analysis on any of the promissory notes that</p> <p>7 were given to Highland by any of the affiliates</p> <p>8 or Mr. Dondero?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Under what circumstances do you</p> <p>11 prepare impairment analyses?</p> <p>12 A. As -- as -- if you're preparing</p> <p>13 financials in accordance with GAAP, generally</p> <p>14 accepted accounting principles, if you're</p> <p>15 preparing full GAAP financials, you should be</p> <p>16 preparing -- you should be undergoing on a</p> <p>17 periodic basis any fair market value</p> <p>18 adjustments to assets.</p> <p>19 As I was instructed at the time of</p> <p>20 the petition date, we weren't producing GAAP</p> <p>21 financials. So this wasn't something I was</p> <p>22 worried about nor concerned about.</p> <p>23 Q. Okay. Were NexPoint and HCMFA and</p> <p>24 Highland's audited financial statements</p> <p>25 prepared in accordance with GAAP?</p>

<p style="text-align: right;">Page 242</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The audited financials -- yes,</p> <p>3 audited financial statements are prepared in</p> <p>4 accordance with GAAP.</p> <p>5 Q. Do you recall whether any of</p> <p>6 Highland or HCMFA or NexPoint ever made a fair</p> <p>7 market value adjustment to any of the notes</p> <p>8 issued by any of the affiliates or Mr. Dondero</p> <p>9 to Highland?</p> <p>10 A. I do not recall that happening, but</p> <p>11 the -- it is because under -- under GAAP,</p> <p>12 the -- the treatment of liabilities is</p> <p>13 different than assets.</p> <p>14 Q. Okay. So then let's just focus on</p> <p>15 Highland's audited financial statements.</p> <p>16 The last audited financial</p> <p>17 statements were for the period ending December</p> <p>18 31st, 2018; correct?</p> <p>19 A. That is my understanding.</p> <p>20 Q. And you had -- you had an obligation</p> <p>21 to disclose anything to PricewaterhouseCoopers</p> <p>22 concerning any subsequent events between the</p> <p>23 end of 2018 and June 3rd, 2019; correct?</p> <p>24 MS. DANDENEAU: Objection to form.</p> <p>25 MS. DEITSCH-PEREZ: Form.</p>	<p style="text-align: right;">Page 243</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Correct.</p> <p>3 Q. Okay. To the best of your</p> <p>4 knowledge, as Highland's CFO, did Highland ever</p> <p>5 make any fair market value adjustments to any</p> <p>6 of the promissory notes that were carried on</p> <p>7 its balance sheet and that were issued by any</p> <p>8 of the affiliates or Mr. Dondero?</p> <p>9 A. I think I answered that question</p> <p>10 earlier. I don't recall doing that for any of</p> <p>11 the -- those -- those notes. So it would have</p> <p>12 included the audit for the -- for the 2018</p> <p>13 period.</p> <p>14 Q. Okay.</p> <p>15 MR. MORRIS: Can we go to the next</p> <p>16 page.</p> <p>17 Q. Do you see this is a note a list of</p> <p>18 notes receivable? Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And do you see that this ties into</p> <p>21 the page that we were just looking?</p> <p>22 A. I'm sorry, can we go back to the</p> <p>23 prior page? I mean, it was at 150,331,222. It</p> <p>24 was on the prior page. Next page. Yes, it</p> <p>25 agrees.</p>
<p style="text-align: right;">Page 244</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. So now let's look at that</p> <p>3 schedule. So this was the face amount of all</p> <p>4 of the promissory notes that Highland held at</p> <p>5 the time this document was filed with the</p> <p>6 bankruptcy court; right?</p> <p>7 A. Yes.</p> <p>8 Q. There is a footnote there that says,</p> <p>9 doubtful or uncollectible accounts are</p> <p>10 evaluated at year-end.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And is it fair to say that as</p> <p>14 of the year-end 2018, the year before this,</p> <p>15 that to the extent any of these notes were</p> <p>16 outstanding at that time, they weren't deemed</p> <p>17 to be doubtful or uncollectible?</p> <p>18 A. Yeah. For the 2018 audit, there</p> <p>19 weren't any -- there weren't any adjustments to</p> <p>20 fair value.</p> <p>21 Q. Okay. And during the bankruptcy, do</p> <p>22 you recall that Highland subsequently reserved</p> <p>23 for the Hunter Mountain Investment Trust note?</p> <p>24 A. Yes.</p> <p>25 Q. Why did Highland -- were you</p>	<p style="text-align: right;">Page 245</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 involved in the decision to reserve the Hunter</p> <p>3 Mountain Investment Trust note?</p> <p>4 A. I was not.</p> <p>5 Q. Do you know why Highland decided to</p> <p>6 reserve for the Hunter Mountain Investment</p> <p>7 Trust note?</p> <p>8 A. I don't know yet decision was made.</p> <p>9 I believe it was made by someone at DSI.</p> <p>10 Q. Okay. I'm just asking if you know</p> <p>11 why.</p> <p>12 Did you ever ask anyone why they</p> <p>13 reserved for that particular note?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you know whether the debtor</p> <p>16 reserved for any other note on this list during</p> <p>17 the bankruptcy?</p> <p>18 A. Again, I don't recall. I wasn't</p> <p>19 part of any process of -- again, like any fair</p> <p>20 value adjustments or anything to that degree.</p> <p>21 Like I said, a lot of that was done by DSI and</p> <p>22 it was kind of out of our court.</p> <p>23 Q. Okay. Do you know if any note</p> <p>24 receivable on this list was ever deemed by the</p> <p>25 debtor to be doubtful or uncollectible?</p>

<p style="text-align: right;">Page 246</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't -- I don't have a</p> <p>3 recollection of every filing, so I don't know.</p> <p>4 Q. Did you ever have a discussion with</p> <p>5 anybody at any time about whether any of the</p> <p>6 notes receivable on this list should be deemed</p> <p>7 to be doubtful or uncollectible?</p> <p>8 A. No. As I previously stated, we were</p> <p>9 told we didn't have to keep GAAP financials.</p> <p>10 We weren't having -- you know, there is no</p> <p>11 underlying audits being performed, so I mean,</p> <p>12 it wasn't something I worried about.</p> <p>13 MR. MORRIS: I move to strike.</p> <p>14 Q. Did you ever have a conversation</p> <p>15 with anybody about any of the notes receivable</p> <p>16 and whether they should be deemed to be</p> <p>17 doubtful or uncollectible? Did you have the</p> <p>18 conversation, yes or no?</p> <p>19 MS. DANDENEAU: Objection to form.</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you recall ever telling anybody</p> <p>22 that you believed any of the notes receivable</p> <p>23 on this list should be doubtful -- should be</p> <p>24 deemed to be doubtful or uncollectible?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p style="text-align: right;">Page 247</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall. I mean, it may have</p> <p>3 happened, you know, again, when we initially</p> <p>4 getting DSI up to speed and going through</p> <p>5 financials, it may have happened, but I don't</p> <p>6 recall specifically.</p> <p>7 Q. While you were the CFO of Highland</p> <p>8 during the time that the company was in</p> <p>9 bankruptcy, did you have any reason to believe</p> <p>10 that any of the notes receivable on this list</p> <p>11 other than Hunter Mountain Investment Trust</p> <p>12 should have been characterized as doubtful or</p> <p>13 uncollectible?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Form.</p> <p>16 A. I didn't know. I didn't form an</p> <p>17 opinion. Bankruptcy was new to me. It still</p> <p>18 is new to me, even after going through this.</p> <p>19 So I really didn't know what to expect nor</p> <p>20 really -- you know, I didn't know.</p> <p>21 MR. MORRIS: I move to strike.</p> <p>22 Q. During the period of Highland's</p> <p>23 bankruptcy when you were serving as CFO, did</p> <p>24 you have any reason to believe any of the notes</p> <p>25 on this list were doubtful or uncollectible?</p>
<p style="text-align: right;">Page 248</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DEITSCH-PEREZ: This is like the</p> <p>3 fifth time you've asked it. Object to the</p> <p>4 form.</p> <p>5 MR. MORRIS: I'm moving to strike,</p> <p>6 if you haven't noticed, because he's not</p> <p>7 answering the question.</p> <p>8 MS. DEITSCH-PEREZ: He was answering</p> <p>9 the question, you just didn't like it, like</p> <p>10 the answer.</p> <p>11 MR. MORRIS: Good Lord.</p> <p>12 Q. Go ahead, Mr. Waterhouse.</p> <p>13 A. Again, I don't -- we brought up a</p> <p>14 myriad of issues at the start of the bankruptcy</p> <p>15 case. I don't recall if this was one of them,</p> <p>16 but, again, there are a lot of things we</p> <p>17 couldn't change. Even, you know, I was told</p> <p>18 status quo, blah, blah, blah, right, there is a</p> <p>19 stay, you can't -- you know, I don't recall</p> <p>20 specifically, but that doesn't mean it didn't</p> <p>21 happen.</p> <p>22 MR. MORRIS: I move to strike.</p> <p>23 Q. During the time that Highland was in</p> <p>24 bankruptcy and you served as CFO, did you have</p> <p>25 any reason to believe that any of the notes</p>	<p style="text-align: right;">Page 249</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 receivable on this list were doubtful or</p> <p>3 uncollectible?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Potentially.</p> <p>7 Q. Did you ever tell anybody that?</p> <p>8 A. As I just stated like five times,</p> <p>9 yes, we -- at the beginning after filing and we</p> <p>10 were getting DSI and others up to speed, you</p> <p>11 know, we had a myriad of discussions of a lot</p> <p>12 of things and this was likely one of them. I</p> <p>13 don't -- but I don't recall specifically we</p> <p>14 talked --</p> <p>15 Q. I don't want to know -- I don't want</p> <p>16 to know what was --</p> <p>17 MS. DEITSCH-PEREZ: Wait, wait.</p> <p>18 Excuse me. Mr. Morris, you did not let him</p> <p>19 finish his answer.</p> <p>20 A. I spoke -- we had -- we were</p> <p>21 bringing Fred Karesa and Brad Sharp (phonetic)</p> <p>22 up to speed on all of these items, contracts,</p> <p>23 and investments and going through -- we had</p> <p>24 hours and hours and hours of discussion. And</p> <p>25 then not only do I have to repeat this not</p>



<p style="text-align: right;">Page 250</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 once, twice, three, four times with -- you</p> <p>3 know, I mean, we -- I don't -- I don't remember</p> <p>4 the sum culmination of all these discussions.</p> <p>5 They all kind of blend together.</p> <p>6 MR. MORRIS: Okay. I move to strike</p> <p>7 and I will try one more time.</p> <p>8 Q. Did you ever tell anybody at DSI</p> <p>9 that you believed any of the notes receivable</p> <p>10 on this list were doubtful or uncollectible?</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 A. Potentially.</p> <p>13 Q. Potentially you told them or</p> <p>14 potentially they were doubtful or</p> <p>15 uncollectible?</p> <p>16 A. Potentially I told them that we</p> <p>17 needed to look at the value of these -- of</p> <p>18 these assets.</p> <p>19 Q. Okay. Did you -- okay. It is</p> <p>20 potential that you told them and it is</p> <p>21 potentially that you didn't, right?</p> <p>22 MS. DANDENEAU: Objection to form.</p> <p>23 A. I've gone through that. I don't</p> <p>24 recall specifically.</p> <p>25 Q. So you should just -- I don't want</p>	<p style="text-align: right;">Page 251</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to tell what you to do. Do you have --</p> <p>3 MS. DANDENEAU: Good.</p> <p>4 Q. Other than -- other than telling</p> <p>5 them that they should look at the values, do</p> <p>6 you have any recollection whatsoever of ever</p> <p>7 having told anybody at DSI that any of the</p> <p>8 notes receivable on this page were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. I recall having general discussions</p> <p>14 about everything on our balance sheet which</p> <p>15 would have included these -- these notes</p> <p>16 receivable.</p> <p>17 Q. Okay.</p> <p>18 A. I don't recall specifically where</p> <p>19 those discussions delved into.</p> <p>20 Q. Do you recall any discussion at all</p> <p>21 on the topic of whether any of these notes on</p> <p>22 this list were doubtful or uncollectible?</p> <p>23 MR. AIGEN: Mr. Morris, how on earth</p> <p>24 is that question different from the</p> <p>25 question that you just asked for the last</p>
<p style="text-align: right;">Page 252</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 five times? I mean, really I thought you</p> <p>3 were -- (overspeak.)</p> <p>4 MR. MORRIS: Because he never</p> <p>5 answered it.</p> <p>6 MS. DEITSCH-PEREZ: Are you</p> <p>7 listening to him?</p> <p>8 MR. MORRIS: You know --</p> <p>9 MS. DEITSCH-PEREZ: He basically</p> <p>10 said that he had a conversation with DSI</p> <p>11 that went over all of this stuff and that</p> <p>12 conversation could have included the notes</p> <p>13 but he doesn't recall specifically.</p> <p>14 What more do you want him -- to ask</p> <p>15 of him?</p> <p>16 MR. MORRIS: I want him -- I would</p> <p>17 love him to say -- I would like him to</p> <p>18 testify to the truth, and that is he has no</p> <p>19 recollection.</p> <p>20 MS. DEITSCH-PEREZ: Well, the truth</p> <p>21 as you would like to see it, but -- but he</p> <p>22 is testifying truthfully. And I -- and, by</p> <p>23 the way, I move to strike that comment --</p> <p>24 MR. MORRIS: Okay.</p> <p>25 MS. DEITSCH-PEREZ: -- because it</p>	<p style="text-align: right;">Page 253</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 suggests that he has not testified</p> <p>3 truthfully.</p> <p>4 MR. MORRIS: I will ask my question</p> <p>5 again. And if at any time you want to</p> <p>6 direct him not to answer, that is your</p> <p>7 prerogative.</p> <p>8 Q. Mr. Waterhouse, do you have any</p> <p>9 recollection at all of ever telling anybody</p> <p>10 from DSI that any of these notes were doubtful</p> <p>11 or uncollectible?</p> <p>12 MS. DANDENEAU: Object to form.</p> <p>13 A. I don't remember specifically.</p> <p>14 Q. Do you remember generally that</p> <p>15 specific topic?</p> <p>16 A. We generally talked about assets,</p> <p>17 values. If -- we had discussions of that and</p> <p>18 collectability in nature. I mean, of Highland,</p> <p>19 the funds, the CLOs, the entire complex. We</p> <p>20 had discussions like that, which is, you know,</p> <p>21 as you look at a billion dollar consolidated</p> <p>22 balance sheet.</p> <p>23 So I generally remember -- this is</p> <p>24 billions of dollars, including these assets --</p> <p>25 having discussions of this -- of this type.</p>

<p style="text-align: right;">Page 254</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you believe that an affiliate</p> <p>3 loan on this list was doubtful or</p> <p>4 uncollectible? Would you have told that to</p> <p>5 DSI?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 MS. DEITSCH-PEREZ: Object to form.</p> <p>8 A. If we had, like -- again, if we --</p> <p>9 if -- if we weren't preparing financial</p> <p>10 statements in accordance with GAAP, and -- you</p> <p>11 know, if DSI at that point -- they were --</p> <p>12 again, I was new to bankruptcy.</p> <p>13 The CRO is -- we are delegating</p> <p>14 everything to the CRO. All the decisionmaking.</p> <p>15 Remember -- remember when you and I went into</p> <p>16 Delaware Court and we were saying DSI basically</p> <p>17 does everything, remember this, Mr. Morris?</p> <p>18 You were my counsel at the time, and</p> <p>19 basically we're running everything through DSI.</p> <p>20 That was what this was like in the early part.</p> <p>21 Everything was communicated through</p> <p>22 DSI. So DSI says this. DSI says that. That</p> <p>23 is what we're doing, and we're pointing out</p> <p>24 things to them.</p> <p>25 Now, they decide what direction this</p>	<p style="text-align: right;">Page 255</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 goes.</p> <p>3 Q. Did you point out that any of</p> <p>4 these --</p> <p>5 A. I don't recall specifically.</p> <p>6 Q. Okay. At any time that you served</p> <p>7 as Highland's CFO, did you ever point out to</p> <p>8 DSI that any of these loans were doubtful or</p> <p>9 uncollectible?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 MS. DANDENEAU: Objection.</p> <p>13 A. If you're asking me if I had a</p> <p>14 conversation with DSI, if any of these loans</p> <p>15 were doubtful or uncollectible, I don't recall</p> <p>16 specifically.</p> <p>17 Q. Do you recall that the debtor filed</p> <p>18 on the docket monthly operating reports?</p> <p>19 A. Yes.</p> <p>20 Q. You prepared those personally,</p> <p>21 didn't you?</p> <p>22 MS. DEITSCH-PEREZ: Objection to</p> <p>23 form.</p> <p>24 A. I didn't personally prepare them,</p> <p>25 the team did with DSI.</p>
<p style="text-align: right;">Page 256</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. But you signed them; correct?</p> <p>3 A. My signature is on the MORs.</p> <p>4 Q. And you signed them as the preparer</p> <p>5 of the document; correct?</p> <p>6 A. Yes, I did this pursuant to DSI's</p> <p>7 instructions.</p> <p>8 Q. Okay. You wouldn't have signed the</p> <p>9 document if you didn't believe it to be</p> <p>10 accurate; correct?</p> <p>11 A. If I had reason to believe it</p> <p>12 wasn't, presumably I wouldn't have signed it.</p> <p>13 Q. Okay. And do you have any reason to</p> <p>14 believe right now that any monthly operating</p> <p>15 report that has your signature on it was</p> <p>16 inaccurate in any way?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. My understanding of the monthly</p> <p>20 operating reports is we were filing them in</p> <p>21 accordance with the standards set by the Court.</p> <p>22 It wasn't -- you know, again, I don't -- you</p> <p>23 know, it wasn't GAAP. It wasn't these other</p> <p>24 standards, so I testified I didn't have</p> <p>25 experience in this. The CRO was running the</p>	<p style="text-align: right;">Page 257</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 show. I followed their advice.</p> <p>3 Q. But you assured yourself that</p> <p>4 everything in the report was accurate before</p> <p>5 you signed them; correct?</p> <p>6 MS. DANDENEAU: Objection to form.</p> <p>7 A. I trusted the guidance from the CRO</p> <p>8 and their team and their experience and their</p> <p>9 guidance for doing this for many, many, many</p> <p>10 years to -- to -- to categorize and put things</p> <p>11 in ways on the form.</p> <p>12 You know, my team had -- had not</p> <p>13 filled out these forms before and needed all of</p> <p>14 this guidance. I'm not an expert in this. I</p> <p>15 have oversight of it. I signed the form. DSI</p> <p>16 told me to.</p> <p>17 Q. And you and your team are the source</p> <p>18 of the information that DSI used to create the</p> <p>19 reports; correct?</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. The books and records reside with</p> <p>22 the -- with -- with the corporate accounting</p> <p>23 team.</p> <p>24 Q. Okay. And the corporate accounting</p> <p>25 team was the corporate accounting team that was</p>



<p style="text-align: right;">Page 258</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 under your direction; correct?</p> <p>3 A. Yes.</p> <p>4 Q. So -- so your team was responsible</p> <p>5 for maintaining Highland's books and records;</p> <p>6 correct?</p> <p>7 A. I'm sorry, my team was responsible?</p> <p>8 Q. Correct.</p> <p>9 A. Yes. They -- they -- they were</p> <p>10 the -- the -- the general ledger of Highland,</p> <p>11 that responsibility was with the corporate</p> <p>12 accounting team.</p> <p>13 Q. The corporate accounting group</p> <p>14 reported to you; correct?</p> <p>15 A. Yes.</p> <p>16 MR. MORRIS: Can we put up 41,</p> <p>17 please.</p> <p>18 (Exhibit 41 marked.)</p> <p>19 Q. All right. You will see that this</p> <p>20 is a report that is dated January 31st, 2020,</p> <p>21 but it is for the month ending December 2019.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And you signed this report in your</p> <p>25 capacity as the chief financial officer of</p>	<p style="text-align: right;">Page 259</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Highland; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you're the preparer -- you're</p> <p>5 identified as the preparer of the report;</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Do you recall participating in the</p> <p>9 preparation of monthly operating reports?</p> <p>10 A. As I testified earlier, it was put</p> <p>11 together, you know, with the team. The team</p> <p>12 worked with DSI to put these monthly operating</p> <p>13 reports together. We had no experience at this</p> <p>14 time of the monthly operating reports or things</p> <p>15 of this nature.</p> <p>16 MR. MORRIS: Can you turn to the</p> <p>17 next page, please.</p> <p>18 Q. Do you see a line item under assets</p> <p>19 due from affiliates?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. And to the best of your</p> <p>22 knowledge and understanding, as the person who</p> <p>23 is identified as the preparer of this report,</p> <p>24 does that line item include the affiliate loans</p> <p>25 that we've been talking about?</p>
<p style="text-align: right;">Page 260</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Again, I would have to see, just</p> <p>3 like we did with the financial statements of</p> <p>4 Highland and NexPoint, I would have to see a</p> <p>5 detailed build, but, you know, if you look at</p> <p>6 the other line items, you know, the only other</p> <p>7 place it could be would be in -- in other</p> <p>8 assets.</p> <p>9 Q. Okay. And as a matter of</p> <p>10 arithmetic, is it fair to say that is the value</p> <p>11 of the assets due from affiliates was more than</p> <p>12 25 percent of the value of Highland's total</p> <p>13 assets as of 12/31/2019?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 A. I'm really not doing the mental math</p> <p>16 right now, so I've been going at this depo for</p> <p>17 hours, so I'm really not -- you know --</p> <p>18 Q. All right. No problem.</p> <p>19 A. -- these are millions of dollars.</p> <p>20 Q. Let's look at the Footnote 1,</p> <p>21 please. Do you see there is a reference to the</p> <p>22 Hunter Mountain note?</p> <p>23 A. Yes, I see that in Footnote 1.</p> <p>24 Q. Okay. And that's the reserve that</p> <p>25 was taken against that note?</p>	<p style="text-align: right;">Page 261</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, that is what this indicates.</p> <p>3 Q. Okay. And were you aware that the</p> <p>4 reserve was being taken on that it was?</p> <p>5 A. I was -- I was aware, yeah, at some</p> <p>6 point, yes.</p> <p>7 Q. Okay. And are you aware of any</p> <p>8 reserve being taken with respect to any other</p> <p>9 note that was issued in favor of Highland?</p> <p>10 A. Again, as I testified, we didn't go</p> <p>11 through an analysis on -- on -- on the other</p> <p>12 notes.</p> <p>13 Q. Can we turn --</p> <p>14 A. I believe -- I believe it says that</p> <p>15 in Footnote 1, fair value has not been</p> <p>16 determined with respect to any of the notes.</p> <p>17 So this footnote -- footnotes, look,</p> <p>18 there has been no determination.</p> <p>19 Q. Okay. The determination was made in</p> <p>20 the audited financial statements just six</p> <p>21 months earlier; right? We saw that earlier?</p> <p>22 A. That was as of 12/31/18. I mean,</p> <p>23 things -- circumstances -- there's a bank --</p> <p>24 circumstances change, things change -- things</p> <p>25 change over time, you know, facts and</p>

<p style="text-align: right;">Page 262</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 circumstances change. Again, you have to do an</p> <p>3 analysis.</p> <p>4 Q. Okay. And you do recall that in</p> <p>5 Highland's 2018 financial statement, all of the</p> <p>6 notes issued by affiliates and Mr. Dondero that</p> <p>7 were due at year-end had a fair value equal to</p> <p>8 the carrying value; correct? We looked at</p> <p>9 that?</p> <p>10 A. Yes. That was in the -- in the</p> <p>11 disclosure for the -- for the affiliate notes,</p> <p>12 yes.</p> <p>13 Q. And -- and you were obligated to</p> <p>14 share with PwC any subsequent events between</p> <p>15 the end of 2018 and the date that you signed</p> <p>16 your management representation letter on June</p> <p>17 3rd, 2019; correct?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. Yes. I -- I -- I signed the</p> <p>21 management, you know, my signature is in the</p> <p>22 management representation letter -- I hope I'm</p> <p>23 answering your question -- that is dated in</p> <p>24 June with the representations made in that</p> <p>25 management representation letter.</p>	<p style="text-align: right;">Page 263</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. And there was nothing that</p> <p>3 caused PricewaterhouseCoopers to include in</p> <p>4 subsequent events any adjustment to the</p> <p>5 conclusion that the fair value of the affiliate</p> <p>6 notes and the notes issued by Mr. Dondero</p> <p>7 equaled the carrying value; correct?</p> <p>8 MS. DANDENEAU: Objection to the</p> <p>9 form.</p> <p>10 A. That is correct. That is what was</p> <p>11 in the -- in the -- in the footnotes.</p> <p>12 Q. Okay. So are you aware of anything</p> <p>13 that occurred between June 3rd, 2019 and</p> <p>14 December 31st, 2019 that would have caused the</p> <p>15 fair value of the notes to differ from the</p> <p>16 carrying value?</p> <p>17 A. Yeah. Highland filed for</p> <p>18 bankruptcy, things changed -- I mean, there was</p> <p>19 a bankruptcy filed in October of -- of -- of</p> <p>20 2019, right, the petition date that we've</p> <p>21 described earlier.</p> <p>22 I mean, I had a -- I guess looking</p> <p>23 back naively, I thought we were going to get an</p> <p>24 audit from PwC for year-ended 2019, and when we</p> <p>25 had discussions with PwC, they were like, are</p>
<p style="text-align: right;">Page 264</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you crazy, we're not auditing this. Values</p> <p>3 change, all these things change, bankruptcy</p> <p>4 changes the entire scenario. I mean -- and</p> <p>5 they're like, we're not -- we're not touching</p> <p>6 this.</p> <p>7 And so, you know, I was like, okay,</p> <p>8 sorry, I get it, okay, no an audit.</p> <p>9 I mean, it is -- you know, and --</p> <p>10 you know, and we weren't preparing GAAP</p> <p>11 financial statements.</p> <p>12 Again, I didn't know what we were</p> <p>13 doing in relation to our financial statements,</p> <p>14 but these were the discussions I was having at</p> <p>15 the time. And yeah, I mean, filing bankruptcy</p> <p>16 from what I got from outside auditors and</p> <p>17 others involved changed things dramatically.</p> <p>18 Q. Okay. Highland wasn't the obligor</p> <p>19 under any of the notes that we're talking</p> <p>20 about; correct?</p> <p>21 A. No.</p> <p>22 Q. So --</p> <p>23 A. That's right.</p> <p>24 Q. So can you identify any fact that</p> <p>25 would cause the fair value to deviate from the</p>	<p style="text-align: right;">Page 265</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 carrying value during the seven-month period</p> <p>3 between June 3rd and the end of the year, 2019?</p> <p>4 MS. DANDENEAU: Objection to form.</p> <p>5 A. No. I mean, I'm putting myself back</p> <p>6 at that time, right. Hindsight is 2020, but we</p> <p>7 didn't do an analysis, but we would have done a</p> <p>8 fulsome analysis and looked at all of the facts</p> <p>9 and circumstances at the time, but asset values</p> <p>10 change. You know, there could have been a</p> <p>11 market crash in hindsight in 2020, which --</p> <p>12 which affected entities' abilities.</p> <p>13 There could have been all of these</p> <p>14 things, right, that -- that happen. It is --</p> <p>15 it is easy to look back in hindsight, but when</p> <p>16 you are looking at this in -- in realtime, the</p> <p>17 analysis is different, and again, we didn't do</p> <p>18 an analysis.</p> <p>19 Q. Okay. You didn't do an analysis.</p> <p>20 Do I have that right?</p> <p>21 A. I don't -- I don't recall doing one</p> <p>22 or maybe -- you know, I don't recall doing one.</p> <p>23 MR. MORRIS: Okay. I'm going to</p> <p>24 take a break. I may be done, so the time</p> <p>25 now is -- is 4:30 your time. Let's just</p>

<p style="text-align: right;">Page 266</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 take a short break until 4:40 your time.</p> <p>3 MS. DANDENEAU: Okay.</p> <p>4 VIDEOGRAPHER: We're going off the</p> <p>5 record, 4:31 p.m.</p> <p>6 (Recess taken 4:31 p.m. to 4:43 p.m.)</p> <p>7 VIDEOGRAPHER: We are back on the</p> <p>8 record at 4:43 p.m.</p> <p>9 MR. MORRIS: I have no further</p> <p>10 questions.</p> <p>11 MR. RUKAVINA: Okay.</p> <p>12 Mr. Waterhouse, I will go next.</p> <p>13 EXAMINATION</p> <p>14 BY MR. RUKAVINA:</p> <p>15 Q. Sir, my name is Davor Rukavina. I'm</p> <p>16 the lawyer for --</p> <p>17 MR. MORRIS: Hey, Davor, just before</p> <p>18 you begin, I just want to put on the record</p> <p>19 Highland's objection to documents that were</p> <p>20 produced to me 10 minutes before the</p> <p>21 deposition began.</p> <p>22 MR. RUKAVINA: What the basis of</p> <p>23 your objection?</p> <p>24 MR. MORRIS: That they were due</p> <p>25 quite some time ago, and the fact that you</p>	<p style="text-align: right;">Page 267</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 had -- I just think it's appropriate to --</p> <p>3 to dump documents on somebody 10 minutes</p> <p>4 before the deposition. I just think</p> <p>5 that's --</p> <p>6 MR. RUKAVINA: Well, these are</p> <p>7 documents Highland produced. I'm not aware</p> <p>8 of any rule I have to give you advance</p> <p>9 documents when I know for the record that</p> <p>10 other than the exhibits that you sent to us</p> <p>11 last week, most of the exhibits you used</p> <p>12 today you did not provide to me prior to</p> <p>13 this deposition.</p> <p>14 MR. MORRIS: No, but the documents</p> <p>15 were produced by me in -- in litigation,</p> <p>16 right?</p> <p>17 MR. RUKAVINA: I'm going to use</p> <p>18 primarily, John, the documents that you</p> <p>19 produced to me today, but you may.</p> <p>20 MR. MORRIS: Primarily. I've got --</p> <p>21 I've got my objection. You have got your</p> <p>22 response. Proceed.</p> <p>23 Q. Mr. Waterhouse, again, I represent</p> <p>24 the advisors, HCMFA and NexPoint Advisors.</p> <p>25 Do you understand that?</p>
<p style="text-align: right;">Page 268</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. You and I have never met or talked</p> <p>4 before today, have we?</p> <p>5 A. No, I have -- I have heard your</p> <p>6 voice on calls before.</p> <p>7 Q. Okay.</p> <p>8 MR. RUKAVINA: Madam Court Reporter,</p> <p>9 I will use a few exhibits today. My</p> <p>10 associate, Mr. Nguyen, will find some way</p> <p>11 to get them to you. I don't know how to do</p> <p>12 that, but it looks like you guys do.</p> <p>13 I am going to use numbers as well.</p> <p>14 But to differentiate them from Mr. Morris</p> <p>15 we're going to mark mine with the prefix A</p> <p>16 for advisors.</p> <p>17 Do you understand?</p> <p>18 COURT REPORTER: Yes.</p> <p>19 MR. RUKAVINA: Okay. Perfect.</p> <p>20 Q. Okay. So, Mr. Waterhouse, let's</p> <p>21 start with those two HCMFA notes that you were</p> <p>22 asked about, one for 5 million and one for</p> <p>23 2.4 million.</p> <p>24 Do you recall those notes?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 269</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Were you ever the CFO of HCMFA?</p> <p>3 A. I don't recall.</p> <p>4 Q. So to the best of your recollection,</p> <p>5 you were still an officer of HCMFA in 2019,</p> <p>6 just that your title was treasurer?</p> <p>7 MR. MORRIS: Object to the form of</p> <p>8 the question. There is no leading here.</p> <p>9 He works for your client.</p> <p>10 MS. DANDENEAU: That is not -- that</p> <p>11 is not true.</p> <p>12 MR. MORRIS: He's the treasurer --</p> <p>13 he is the treasurer of your client. I</p> <p>14 don't -- I'm going to object every time you</p> <p>15 try to lead, so...</p> <p>16 MR. RUKAVINA: Totally fine to</p> <p>17 object.</p> <p>18 MR. MORRIS: Okay.</p> <p>19 Q. Please answer my question,</p> <p>20 Mr. Waterhouse.</p> <p>21 A. I'm sorry, could you repeat? There</p> <p>22 was...</p> <p>23 Q. Yes. You were -- you testified</p> <p>24 earlier that in 2019 you were an officer of</p> <p>25 HCMFA; correct?</p>

<p style="text-align: right;">Page 270</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I testified that I was the</p> <p>3 treasurer and I didn't know if that incumbency</p> <p>4 certificate, you know, was one that appointed</p> <p>5 me as a treasurer, but yes.</p> <p>6 Q. I'm just trying to confirm that</p> <p>7 sitting here today, to the best of your</p> <p>8 recollection, at that time you were -- your</p> <p>9 title was treasurer. It was not chief</p> <p>10 financial officer.</p> <p>11 A. I don't recall that being my title.</p> <p>12 Q. Okay. And in May of 2019, however,</p> <p>13 I think you testified you were the chief</p> <p>14 financial officer of the debtor; correct?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes, I was -- yes.</p> <p>18 Q. Okay. As such, in May of 2019, did</p> <p>19 you have the authority, to your understanding,</p> <p>20 to unilaterally loan \$5 million or \$2.4 million</p> <p>21 to anyone on behalf of the debtor?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Sorry, can you repeat that?</p> <p>25 Q. Yes. So in your capacity as the</p>	<p style="text-align: right;">Page 271</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 chief financial officer of the debtor, Highland</p> <p>3 Capital Management, L.P., in May of 2019, did</p> <p>4 you believe that you unilaterally, just Frank</p> <p>5 Waterhouse, had the authority to loan on behalf</p> <p>6 of the debtor to anyone \$5 million and</p> <p>7 \$2.4 million?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. No.</p> <p>11 Q. Is it because loans of that amount</p> <p>12 would have had to be approved by someone else?</p> <p>13 A. Yes.</p> <p>14 Q. Who in '20 -- in May of 2019, if</p> <p>15 Highland wanted to loan 5 million or</p> <p>16 \$2.4 million to someone, what would have been</p> <p>17 the internal approval procedure?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. If -- if we had loans of that nature</p> <p>21 that needed to be made due to their size, we</p> <p>22 would have gotten approval from the -- the</p> <p>23 president of Highland.</p> <p>24 Q. And who that was individual?</p> <p>25 A. It was James Dondero.</p>
<p style="text-align: right;">Page 272</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Now, I'm going to ask you a</p> <p>3 similar question but for a different entity.</p> <p>4 In May of 2019, as the treasurer of</p> <p>5 HCMFA, did you believe that you unilaterally</p> <p>6 had the ability to cause HCMFA to become the</p> <p>7 borrower of a \$5 million loan and a</p> <p>8 \$2.4 million loan?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. No.</p> <p>12 Q. What would -- what would the</p> <p>13 approval have taken place -- strike that.</p> <p>14 What would the approval process have</p> <p>15 been like in May of 2019 at HCMFA for HCMFA to</p> <p>16 take out a \$7.4 million loan?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. The process would have been similar</p> <p>20 to what we just discussed on -- for Highland to</p> <p>21 make a loan to others. So, again, you know,</p> <p>22 we -- we would have -- either myself or someone</p> <p>23 on the team would have discussed this with</p> <p>24 the -- the president and owner of -- of HCMFA.</p> <p>25 Q. And who was that individual?</p>	<p style="text-align: right;">Page 273</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. That was James -- Jim Dondero.</p> <p>3 Q. So do I understand that in May of</p> <p>4 2019, on behalf of both the lender, Highland,</p> <p>5 and the borrower, HCMFA, Mr. Dondero would have</p> <p>6 had to approve \$7.4 million in loans?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Yes.</p> <p>10 Q. You mentioned when Mr. Morris was</p> <p>11 asking you the NAV error, N-A-V error, with</p> <p>12 respect to TerreStar, without writing us a</p> <p>13 novel, unless you feel like you have to, can</p> <p>14 you summarize what that NAV error was? What</p> <p>15 happened?</p> <p>16 A. There was a -- in the Highland</p> <p>17 Global Allocation Fund, it owned at the time an</p> <p>18 equity interest in a company called TerreStar.</p> <p>19 And TerreStar is -- at the time was a private</p> <p>20 company, and it may still be today. Again, I'm</p> <p>21 putting myself back then as a private company.</p> <p>22 We had -- sorry, I don't mean we --</p> <p>23 the fund and the advisor used Houlihan Lokey</p> <p>24 to -- to value that investment. And during</p> <p>25 that time there was some trades that were</p>

<p style="text-align: right;">Page 274</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 executed at market levels that were much lower</p> <p>3 than the Houlihan Lokey model.</p> <p>4 And based on information and</p> <p>5 discussions with the portfolio managers and,</p> <p>6 you know, principals that were very familiar</p> <p>7 with TerreStar, it was determined that those</p> <p>8 trades were non-orderly and they were not</p> <p>9 considered in the valuation as consulted with</p> <p>10 Houlihan Lokey and PricewaterhouseCoopers at</p> <p>11 the time.</p> <p>12 Subsequent to a -- I can't remember</p> <p>13 the exact circumstances of why the SEC got</p> <p>14 involved. I think it was due to this -- this</p> <p>15 investment became a material position in the</p> <p>16 fund. It triggered an SEC, kind of, inquiry.</p> <p>17 And as part of that inquiry, they questioned</p> <p>18 the valuation methodology. "They" meaning the</p> <p>19 SEC.</p> <p>20 And at the culmination of that</p> <p>21 process -- this is all summarized -- the value</p> <p>22 that was -- that ultimately had to be used in</p> <p>23 the fund's NAV was different than -- materially</p> <p>24 different than what the original valuation at</p> <p>25 Houlihan Lokey provided.</p>	<p style="text-align: right;">Page 275</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And given that there was this fund</p> <p>3 was, as we discussed -- I don't know if we</p> <p>4 discussed it, but it was an open-ended fund</p> <p>5 that was going -- that was converting to a</p> <p>6 close-end fund.</p> <p>7 Due to the fact that it was an</p> <p>8 open-ended fund, you had to recalculate NAV and</p> <p>9 see what the impact was on people -- on</p> <p>10 investors coming in and out of the fund and if</p> <p>11 there is a detrimental impact and to calculate</p> <p>12 what that -- what that impact was and if there</p> <p>13 was any amounts owed to the fund pursuant to</p> <p>14 the error.</p> <p>15 Q. Were you personally involved</p> <p>16 internally at either Highland or HCMFA with</p> <p>17 these investigations and discussions with the</p> <p>18 SEC?</p> <p>19 A. I was.</p> <p>20 Q. Which other key people or senior</p> <p>21 people at Highland were involved, to your</p> <p>22 recollection?</p> <p>23 A. Myself, Thomas Surgent, David Klos,</p> <p>24 Lauren Thedford, Jason Post.</p> <p>25 Q. Mr. Dondero, was he --</p>
<p style="text-align: right;">Page 276</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe Cliff Stoops. I'm trying</p> <p>3 to think. And maybe that is -- that is -- that</p> <p>4 is -- that is all kind I can recall at the</p> <p>5 moment.</p> <p>6 Q. Do you recall whether it was</p> <p>7 determined that the fund suffered losses as a</p> <p>8 result of this error?</p> <p>9 A. The -- the fund -- the -- the --</p> <p>10 because the open-ended nature of the fund,</p> <p>11 there were losses that were attributable to</p> <p>12 investors. Meaning they -- they would have</p> <p>13 redeemed and got a less money or -- or they</p> <p>14 subscribed in and maybe because they didn't get</p> <p>15 enough shares and then they later sold and then</p> <p>16 they were harmed in that fashion.</p> <p>17 And there is -- there is -- there</p> <p>18 were very -- there were very detailed</p> <p>19 calculations and, you know, all these different</p> <p>20 scenarios that we had to -- I'm sorry, I keep</p> <p>21 saying "we" -- that the individuals involved</p> <p>22 had to calculate and quantify.</p> <p>23 Q. Well, do you recall whether HCMFA</p> <p>24 admitted certain fault and liability for this</p> <p>25 error?</p>	<p style="text-align: right;">Page 277</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I don't recall specifically.</p> <p>3 Q. Do you recall whether HCMFA caused</p> <p>4 any funds to be paid to the investors and the</p> <p>5 fund the subject of the NAV error?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall the approximate amount</p> <p>8 of funds, moneys paid to the investors and the</p> <p>9 fund?</p> <p>10 A. It was -- it was approximately</p> <p>11 \$7 million.</p> <p>12 Q. If I was to suggest 7.8 million,</p> <p>13 would that ring more true or are you sticking</p> <p>14 with your original answer?</p> <p>15 A. It was -- it was approximately 7 --</p> <p>16 7 to \$8 million. Again, I don't remember the</p> <p>17 exact number, but it was in that ballpark.</p> <p>18 Q. So regardless of whether HCMFA</p> <p>19 accepted fault or liability, it caused some</p> <p>20 \$7 million or more to be paid out to affected</p> <p>21 investors in the fund?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. And I want to make sure I'm</p> <p>25 understanding your question because there is a</p>



<p style="text-align: right;">Page 278</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 lot of different entities that are going on to</p> <p>3 my head.</p> <p>4 I think what you are saying is based</p> <p>5 on this error, shareholders were harmed by this</p> <p>6 approximately \$7.8 million -- by approximately</p> <p>7 \$7.8 million. Is that what you are asking?</p> <p>8 Q. Yes, sir.</p> <p>9 A. Yes, that was -- again, I don't have</p> <p>10 the exact numbers. If I take -- it was -- it</p> <p>11 was in that ballpark, and there is a detail</p> <p>12 calculation and write-up that could, that --</p> <p>13 that exists someplace.</p> <p>14 Q. Now, at that time, at the time that</p> <p>15 the NAV error occurred, was there a contract in</p> <p>16 place between HCMFA and the debtor pursuant to</p> <p>17 which the debtor was providing services to</p> <p>18 HCMFA?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Was that contract generally called a</p> <p>23 shared services agreement?</p> <p>24 A. It was generally called that, but</p> <p>25 there were -- there were -- I mean, it -- it --</p>	<p style="text-align: right;">Page 279</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it depends on who you talk to, but yes,</p> <p>3 generally, there were -- there are multiple</p> <p>4 agreements.</p> <p>5 Q. Pursuant to one or more of those</p> <p>6 agreements, was the debtor providing certain</p> <p>7 services to HCMFA?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes.</p> <p>11 Q. And can you at a very high level</p> <p>12 summarize in 2018 and 2019 what those services</p> <p>13 were?</p> <p>14 A. Yes, there was a -- yes.</p> <p>15 Q. Okay. Please -- please go -- go</p> <p>16 through a short summary.</p> <p>17 A. There was a -- a cost reimbursement</p> <p>18 agreement between Highland Capital Management</p> <p>19 Fund Advisors and Highland Capital Management,</p> <p>20 L.P. That agreement was for what we referred</p> <p>21 to as front office services, so investment</p> <p>22 management, things of that nature.</p> <p>23 There was I think what most people</p> <p>24 refer to as the shared services agreement that</p> <p>25 was -- that agreement was between Highland</p>
<p style="text-align: right;">Page 280</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Capital Management Fund Advisors and Highland</p> <p>3 Capital Management for back office services.</p> <p>4 Q. And can you summarize what you mean</p> <p>5 by back office services?</p> <p>6 A. Those services were for accounting,</p> <p>7 finance, tax, valuation, HR, IT, you know,</p> <p>8 legal compliance, things of -- things of those</p> <p>9 nature -- or things of that nature, excuse me.</p> <p>10 Q. So in the spring of 2019, do you</p> <p>11 recall whether HCMFA took the position that it</p> <p>12 was actually Highland that caused the NAV error</p> <p>13 to occur pursuant to the valuation services</p> <p>14 that Highland was providing?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I do not recall.</p> <p>18 Q. Did you ever have any discussions</p> <p>19 with anyone, Jim Dondero or anyone in the first</p> <p>20 half of 2019 as to whether Highland, the</p> <p>21 debtor, that is, had any liability to HCMFA</p> <p>22 related to the NAV error?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I do not recall.</p>	<p style="text-align: right;">Page 281</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And then you mentioned that the fund</p> <p>3 was being closed and some compensation related</p> <p>4 to that. Can you -- can you elaborate? What</p> <p>5 were you referring to?</p> <p>6 A. Right. So the advisor, pursuant to</p> <p>7 board approval, put a proposal in front of the</p> <p>8 shareholders of the Highland Global Allocation</p> <p>9 Fund to convert it from an open-ended fund to a</p> <p>10 closed-end fund.</p> <p>11 So an open-ended fund, when</p> <p>12 shareholders subscribe to the fund or redeem</p> <p>13 into the fund, they do it at NAV.</p> <p>14 When it is -- when you have a</p> <p>15 closed-end fund, closed-end funds are -- are</p> <p>16 publicly-traded, like on the New York Stock</p> <p>17 Exchange, exchanges like that, and -- and</p> <p>18 shareholders or investors, they're not --</p> <p>19 they're -- they're not subscribing and</p> <p>20 redeeming with the fund. They are like shares</p> <p>21 of Apple.</p> <p>22 Those shares of the Highland Global</p> <p>23 Allocation Fund trade on an exchange, and that</p> <p>24 is how you, you know, that is how, you know,</p> <p>25 you become an equity owner in the fund or you</p>

<p style="text-align: right;">Page 282</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 sell your shares and you are no longer an</p> <p>3 equity owner.</p> <p>4 As part of that proposal, the</p> <p>5 advisor told shareholders if you -- if you vote</p> <p>6 for this proposal to -- to convert it from an</p> <p>7 open-ended fund to a closed-end fund, we will</p> <p>8 pay you some amounts of money. I forgot -- a</p> <p>9 certain number of points. I think it was</p> <p>10 like -- it was like two to three points or</p> <p>11 something -- something like that.</p> <p>12 Q. Okay. You mentioned when Mr. Morris</p> <p>13 was asking you, going back to those two</p> <p>14 promissory notes, you will recall the 5 million</p> <p>15 and 2.4 million, you mentioned something to the</p> <p>16 effect that Mr. Dondero told -- told you to pay</p> <p>17 some moneys out of Highland. Do you remember</p> <p>18 that discussion with Mr. Morris?</p> <p>19 A. I do.</p> <p>20 Q. So, to the best of your</p> <p>21 recollection, did you have a discussion with</p> <p>22 Mr. Dondero about making some payments in May</p> <p>23 of 2019 out of Highland?</p> <p>24 A. I recall, as I testified earlier,</p> <p>25 that I had a conversation with Mr. Dondero</p>	<p style="text-align: right;">Page 283</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 for -- for these amounts attributable to -- it</p> <p>3 was either the error -- you know, the error,</p> <p>4 and in that conversation he said, go get the</p> <p>5 money from Highland. I believe that is what I</p> <p>6 testified earlier, and that -- that is my</p> <p>7 recollection.</p> <p>8 Q. Do you recall if that was an</p> <p>9 in-person meeting or some other mode for the</p> <p>10 meeting?</p> <p>11 A. I -- I -- I recall that being</p> <p>12 in-person.</p> <p>13 Q. Do you recall if anyone else was</p> <p>14 present, or was it just you and Mr. Dondero?</p> <p>15 A. I recall just he and I.</p> <p>16 Q. And the moneys that he told you to</p> <p>17 find from -- or get from Highland, was that in</p> <p>18 the amount of \$5 million and \$2.4 million?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I believe so, but I would have to go</p> <p>22 back and look and see when those moneys were</p> <p>23 actually paid into the -- into the fund and,</p> <p>24 you know, when those transfers were done. If</p> <p>25 they were all done around that same time, then</p>
<p style="text-align: right;">Page 284</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 yes, I would say it was -- it was all related</p> <p>3 to that.</p> <p>4 Q. Did Mr. Dondero tell you that those</p> <p>5 funds would be a loan from Highland to HCMFA?</p> <p>6 A. I don't recall.</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 Q. Now, and forgive me, I'm probably</p> <p>10 the only non-American born here, but I speak</p> <p>11 reasonably well in English. I don't recall,</p> <p>12 does that mean you don't remember or does that</p> <p>13 mean it didn't happen?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It -- it means I don't -- I don't</p> <p>17 remember.</p> <p>18 Q. Did Mr. Dondero tell you to have</p> <p>19 those two promissory notes prepared?</p> <p>20 A. I don't recall.</p> <p>21 Q. When you -- again, when you say, I</p> <p>22 don't recall today, that means that sitting</p> <p>23 here today, you just don't remember one way or</p> <p>24 the other. Is that accurate?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 285</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it possible that you, having</p> <p>3 heard what Mr. Dondero said and seeing funds</p> <p>4 being transferred, assumed that that would be a</p> <p>5 loan without him actually telling you that</p> <p>6 would be a loan?</p> <p>7 MR. MORRIS: Objection to the form</p> <p>8 of the question.</p> <p>9 A. Sorry, I want to make sure -- did I</p> <p>10 ask the amounts that were transferred that I --</p> <p>11 that -- that I assumed that that was a loan?</p> <p>12 Q. Well, let me -- let me take -- let</p> <p>13 me try again.</p> <p>14 So you have established already that</p> <p>15 there were quite a number of promissory notes</p> <p>16 back and forth -- I'm sorry, quite a number of</p> <p>17 promissory notes with affiliated companies and</p> <p>18 individuals owing Highland money; right?</p> <p>19 A. Yes.</p> <p>20 Q. And you have established that there</p> <p>21 were many transactions and transfers going back</p> <p>22 and forth over the years; right?</p> <p>23 MS. DANDENEAU: Objection to form.</p> <p>24 A. In -- yes, in my capacity as CFO and</p> <p>25 my employment, yes, that is -- yes.</p>



<p style="text-align: right;">Page 286</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that's part of the reason why</p> <p>3 you just can't remember some of the details</p> <p>4 today because this -- this happened years ago,</p> <p>5 and there were a number of transactions. Is</p> <p>6 that accurate?</p> <p>7 MS. DANDENEAU: Objection to the</p> <p>8 form.</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I mean, I deal with thousands of --</p> <p>12 of -- of -- of transactions, you know, whether</p> <p>13 it has -- the processing of transactions, you</p> <p>14 know, if it has got, you know, more -- more</p> <p>15 zeros, you know, behind it than others.</p> <p>16 When you look at thousands of</p> <p>17 transactions over the years for funds and</p> <p>18 advisors and -- and, you know, financial</p> <p>19 statements, I mean, it is -- it is very hard</p> <p>20 going back in -- in -- in my -- you know,</p> <p>21 14-ish year career at -- at Highland to</p> <p>22 remember a lot of those details, especially</p> <p>23 when I don't have any records or books or</p> <p>24 anything like that, and -- and going back many</p> <p>25 years.</p>	<p style="text-align: right;">Page 287</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And that is fine. That -- that --</p> <p>3 that is why I asked the question.</p> <p>4 Is it possible in May of 2019 when</p> <p>5 Mr. Dondero told you to transfer the funds from</p> <p>6 Highland, you just assumed on your own that</p> <p>7 those would be loans without him actually</p> <p>8 telling you that those would be loans?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. I don't know.</p> <p>12 Q. I'm sorry, you --</p> <p>13 A. I said I don't know.</p> <p>14 Q. Okay. Well, as the -- as the CFO</p> <p>15 for Highland, if you saw \$7.4 million going</p> <p>16 out, you would feel some responsibility to</p> <p>17 account for that, wouldn't you?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to say that those would</p> <p>22 be in the range large enough to rise up to your</p> <p>23 level?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p style="text-align: right;">Page 288</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. If -- I don't know if I understand</p> <p>3 your question. Those amounts would arise to my</p> <p>4 level where I would be involved or...</p> <p>5 Q. You would want to know what a</p> <p>6 transfer for that amount, \$7.4 million, was all</p> <p>7 about, as the CFO of Highland, wouldn't you?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, I make it -- I mean, I -- I</p> <p>11 review all sorts of payments, I mean, even</p> <p>12 smaller dollar payments on a periodic basis,</p> <p>13 you know, to -- to -- to understand and to make</p> <p>14 sure that we are paying things in a -- you</p> <p>15 know, in -- in -- in an informed way. And, you</p> <p>16 know -- and we're -- and we're paying things</p> <p>17 pursuant to vendor contracts and things like</p> <p>18 that.</p> <p>19 Q. So as part of that, is it possible</p> <p>20 that seeing \$7.4 million go out you would have</p> <p>21 promissory notes made in order to keep a paper</p> <p>22 trail, assuming that those were loans, when</p> <p>23 perhaps they were never intended to be loans by</p> <p>24 Mr. Dondero?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p style="text-align: right;">Page 289</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I don't know. As I testified</p> <p>4 earlier, I had conversations with Mr. Dondero</p> <p>5 about -- about the -- the -- the moneys that</p> <p>6 were needed for the NAV error. And I recall</p> <p>7 him saying go get it from Highland -- or get it</p> <p>8 from Highland.</p> <p>9 Q. Well, why did you sign those</p> <p>10 promissory notes and why didn't you have him</p> <p>11 sign them?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. I don't know.</p> <p>15 Q. You mentioned earlier that you</p> <p>16 typically don't sign promissory notes. Am I</p> <p>17 remembering your testimony correctly?</p> <p>18 I mean, promissory notes on behalf</p> <p>19 of the entities. Not yourself, obviously.</p> <p>20 A. Yes, that is what I said earlier.</p> <p>21 Q. Do you recall any other promissory</p> <p>22 notes in the million-plus range that you had</p> <p>23 ever signed before on behalf of any entity?</p> <p>24 A. There is -- there has been a lot of</p> <p>25 transactions over the years. I don't -- I</p>

<p style="text-align: right;">Page 290</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 don't -- I don't recall generally. I don't --</p> <p>3 I don't recall.</p> <p>4 Q. So -- but to the best of your</p> <p>5 recollection, it was on your initiative,</p> <p>6 following your discussion with Mr. Dondero,</p> <p>7 that you had someone draft those two promissory</p> <p>8 notes; is that correct?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes, we would have -- the team, as I</p> <p>12 stated earlier, we don't draft promissory</p> <p>13 notes. "The team" meaning the accounting and</p> <p>14 finance team.</p> <p>15 So the team would have worked with</p> <p>16 the legal group at Highland to draft any notes.</p> <p>17 Q. Do you believe or do you have any</p> <p>18 recollection as to whether you would have done</p> <p>19 that pursuant to an email or telephone call or</p> <p>20 in-person meeting?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Are you asking if I would have -- if</p> <p>24 those notes would have been drafted pursuant to</p> <p>25 an email or phone call?</p>	<p style="text-align: right;">Page 291</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Strike that.</p> <p>3 Do you recall whether you sent an</p> <p>4 email to anyone asking them to draft those two</p> <p>5 promissory notes?</p> <p>6 A. I don't recall because, again,</p> <p>7 once -- I would have instructed -- likely</p> <p>8 instructed the team to -- to work with the</p> <p>9 legal group to draft these documents.</p> <p>10 I -- I -- I -- yeah, I didn't -- I</p> <p>11 mean, that is more an operational-type</p> <p>12 procedure. So, you know, a manager or a</p> <p>13 controller or working with legal. You know,</p> <p>14 they -- they can certainly handle that task to</p> <p>15 get that -- you know, to request that from</p> <p>16 legal.</p> <p>17 Q. And who on your team do you think</p> <p>18 you would have asked to do that?</p> <p>19 MR. MORRIS: Objection --</p> <p>20 Q. Who would have been the logical</p> <p>21 person or people, if you don't remember their</p> <p>22 name today?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. It -- it -- there is only two</p>
<p style="text-align: right;">Page 292</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 managers of the group. That would have been</p> <p>3 Dave Klos or Kristin Hendrix.</p> <p>4 Dave was the -- one of his duties</p> <p>5 was managing the valuation team, and so he was</p> <p>6 intimately involved with this process. So, you</p> <p>7 know...</p> <p>8 Q. Okay.</p> <p>9 A. I don't recall specifically but, I</p> <p>10 mean, my general -- you know, I -- I -- I</p> <p>11 likely would have talked to Dave first about it</p> <p>12 versus someone like Kristin who hadn't been</p> <p>13 intimately involved.</p> <p>14 Q. And -- and do you have a view as to</p> <p>15 whether it is most likely that you would have</p> <p>16 done that by email or in-person or how would</p> <p>17 you believe you would have communicated that to</p> <p>18 Mr. Klos?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I likely would have done that in</p> <p>22 person. Again, if things of this nature</p> <p>23 that -- again, you have to put ourselves back</p> <p>24 to, we have been working on this very stressful</p> <p>25 project for many, many months. And once the</p>	<p style="text-align: right;">Page 293</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 go-ahead was to -- you know, we see the light</p> <p>3 at the end of the tunnel with wrapping this up</p> <p>4 and making shareholders whole -- sorry to say</p> <p>5 "we" -- you know, the -- so the folks that are</p> <p>6 involved in it.</p> <p>7 I like to talk to people</p> <p>8 face-to-face and -- and -- and go to -- and go</p> <p>9 to their desk, because that shows if I'm going</p> <p>10 to their desk that -- that is something that I</p> <p>11 want done, you know.</p> <p>12 Q. And do you remember, Mr. Waterhouse,</p> <p>13 getting those two promissory notes in paper</p> <p>14 format or by email before they were executed?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall.</p> <p>18 Q. For whatever was the ordinary course</p> <p>19 back then in May 2019, would you expect to have</p> <p>20 received them only on paper or would you have</p> <p>21 expected to have received them in Word document</p> <p>22 or PDF document by email?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I -- I didn't sign -- I signed very</p>

<p style="text-align: right;">Page 294</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 few documents via email. I can't say that it</p> <p>3 never happened, but people either stopped by my</p> <p>4 office and physically walked in documents for</p> <p>5 signature that we discussed face-to-face.</p> <p>6 Or documents were -- if -- if --</p> <p>7 if -- if -- let's say I wasn't there or I</p> <p>8 wasn't available, documents were dropped off.</p> <p>9 I had -- I had some in- and outboxes in front</p> <p>10 of my -- my office there at the Crescent.</p> <p>11 Documents would be dropped off for</p> <p>12 signature. There would be a cover sheet that</p> <p>13 would be -- have been applied to those</p> <p>14 documents detailing, you know, who dropped it</p> <p>15 off, the purpose, why, what time.</p> <p>16 And then, you know, as I stated, I</p> <p>17 don't draft documents and I always go to the</p> <p>18 legal group and the compliance group to make</p> <p>19 sure that they're in the loop. And there is</p> <p>20 a -- a box or section that says, Has legal</p> <p>21 reviewed or approved, or something to that</p> <p>22 nature.</p> <p>23 Again, I don't -- I don't have</p> <p>24 access to that cover sheet anymore, but it</p> <p>25 was -- it was something to that effect.</p>	<p style="text-align: right;">Page 295</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 And my assistant, you know, if she</p> <p>3 was there, she would review that -- you know,</p> <p>4 whatever was being dropped off. And if that</p> <p>5 has legal, you know, reviewed or -- reviewed or</p> <p>6 approved it, if that wasn't -- if that stuff</p> <p>7 hadn't been done, it was like she would just</p> <p>8 tell them like, go -- go -- go to the legal</p> <p>9 group, because --</p> <p>10 Q. Let me -- let me pause --</p> <p>11 MS. DANDENEAU: Let him finish.</p> <p>12 MR. MORRIS: Thank you. Go ahead.</p> <p>13 A. I take -- go to the legal group</p> <p>14 because that -- that was my -- you know, I</p> <p>15 didn't -- I didn't review anything that -- that</p> <p>16 they weren't -- you know, or there wasn't some</p> <p>17 representation made to me that they had</p> <p>18 reviewed, approved in some capacity.</p> <p>19 Again, my -- my -- my goal, as CFO,</p> <p>20 is to provide transparency and make sure that</p> <p>21 groups like compliance and other things -- and</p> <p>22 the other group in legal are -- are in -- you</p> <p>23 know, their -- they're made aware of</p> <p>24 transactions of -- you know, that are crossing</p> <p>25 my desk.</p>
<p style="text-align: right;">Page 296</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Because I'm not in every</p> <p>3 conversation. They're not in every</p> <p>4 conversation -- meaning legal compliance -- and</p> <p>5 I just want to make sure that -- that everyone</p> <p>6 is in sync to, you know, to -- to the extent</p> <p>7 possible.</p> <p>8 Q. So if we summarize, you don't</p> <p>9 specifically remember signing these two notes,</p> <p>10 but most likely it would have been that they</p> <p>11 would have presented -- been presented to you</p> <p>12 physically on paper?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. They would -- they would have been</p> <p>16 presented physically on paper most likely or</p> <p>17 someone would have left it. But, I mean,</p> <p>18 again, I don't -- I don't recall.</p> <p>19 Q. I understand. Understand.</p> <p>20 When you signed -- when you signed</p> <p>21 documents, when you personally signed</p> <p>22 documents, did you typically use a ink pen or</p> <p>23 did you use a stamp?</p> <p>24 A. No, I -- I -- I use a -- an -- an</p> <p>25 ink pen.</p>	<p style="text-align: right;">Page 297</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know -- was there a file at</p> <p>3 Highland kept anywhere with ink-signed</p> <p>4 originals of a promissory notes in general or</p> <p>5 these two promissory notes specifically?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Sorry, I just want to make sure I</p> <p>9 understand your question. Are you saying is</p> <p>10 there a file somewhere that has ink-signed</p> <p>11 originals of these two promissory notes?</p> <p>12 Q. Yes.</p> <p>13 A. I would -- I would assume they're</p> <p>14 some place. I mean --</p> <p>15 Q. Well, was there a -- was there a</p> <p>16 place where Highland generally kept originals</p> <p>17 of promissory notes owed to it?</p> <p>18 A. I wouldn't -- no.</p> <p>19 MR. RUKAVINA: Mr. Nguyen, would you</p> <p>20 please pull up my A7, alpha 7.</p> <p>21 Q. These are the two promissory notes,</p> <p>22 Mr. Waterhouse.</p> <p>23 (Exhibit A7 marked.)</p> <p>24 Q. And please -- Mr. Waterhouse, please</p> <p>25 command my associate to scroll down as you need</p>

<p style="text-align: right;">Page 298</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to, but I want you to take a very close look at</p> <p>3 your two signatures here and tell me whether</p> <p>4 you believe, in fact, that you ink signed them</p> <p>5 or whether you --</p> <p>6 MS. DANDENEAU: Mr. Rukavina,</p> <p>7 Mr. Waterhouse has the copies.</p> <p>8 MR. RUKAVINA: Perfect. Then you</p> <p>9 can take this down, Mr. Nguyen.</p> <p>10 A. These -- these -- these signatures</p> <p>11 are identical, now that I stare at them, and I</p> <p>12 mean, they are so close -- I mean, they're</p> <p>13 identical that, I mean, even with my chicken</p> <p>14 scratch signature, I don't know if I can -- you</p> <p>15 know, I do this 100 times, could I do that</p> <p>16 as -- as precisely as I see between the two</p> <p>17 notes.</p> <p>18 Q. Well, that is why I ask.</p> <p>19 Mr. Waterhouse, now that you have examined</p> <p>20 them, does it seem like it is more likely that</p> <p>21 you actually electronically signed these?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Is -- I don't -- I don't recall</p> <p>25 specifically. As I said before, my assistant</p>	<p style="text-align: right;">Page 299</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 did have a -- an electronic signature, and that</p> <p>3 was used from time to time. It wasn't as</p> <p>4 common practice back in 2019. It definitely</p> <p>5 was more common practice when we had to work</p> <p>6 from home and remotely for COVID because it</p> <p>7 that made it almost impossible to, right,</p> <p>8 provide wet signatures since we're all working</p> <p>9 from home remotely.</p> <p>10 Q. Well, going just for these two</p> <p>11 promissory notes, Mr. Waterhouse, in light of</p> <p>12 your inability to remember any details, are you</p> <p>13 sure you actually signed either or both of</p> <p>14 those notes?</p> <p>15 MS. DANDENEAU: Objection to form.</p> <p>16 A. I don't recall specifically</p> <p>17 signing -- actually physically signing these</p> <p>18 notes. As I said before, I don't recall doing</p> <p>19 that. This -- this looks like my signature,</p> <p>20 but yet these two signatures are identical.</p> <p>21 Q. So you don't recall physically</p> <p>22 signing them, and I take it you don't recall</p> <p>23 electronically signing them either?</p> <p>24 A. I don't recall. You know, Highland</p> <p>25 has all my emails. If that occurred, you know,</p>
<p style="text-align: right;">Page 300</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you know, I don't have any of these records is</p> <p>3 what I'm saying. I don't have any of those</p> <p>4 records.</p> <p>5 Q. That is why I'm asking you these</p> <p>6 questions in great detail because I don't have</p> <p>7 those emails. I'm trying to -- I'm hoping that</p> <p>8 you will give me some names or some details so</p> <p>9 I can go look for more emails, but again, you</p> <p>10 don't remember any -- any individual, other</p> <p>11 than Mr. Dondero that we've discussed, you</p> <p>12 don't remember any individual with whom you</p> <p>13 discussed these promissory notes prior to their</p> <p>14 execution?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't recall discussing it with</p> <p>18 anybody else.</p> <p>19 Q. Okay.</p> <p>20 A. I mean, prior --</p> <p>21 Q. I understand.</p> <p>22 A. You know, there was no one else --</p> <p>23 there was no one else in that meeting that I</p> <p>24 recall with Mr. Dondero.</p> <p>25 Q. Now, when you established that by</p>	<p style="text-align: right;">Page 301</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 May of 2019 --</p> <p>3 A. And -- and from what I recall, and</p> <p>4 the reason why I was by myself is -- is, you</p> <p>5 know, I don't -- I don't want to speculate, I'm</p> <p>6 sorry.</p> <p>7 Q. Okay. We have established that by</p> <p>8 May of 2019, in your view, the liabilities of</p> <p>9 HCMFA exceeded its assets; correct?</p> <p>10 A. Yeah. I mean, again, I don't have</p> <p>11 financial statements in front of me, but I</p> <p>12 think, if I recall, we'd have to go through the</p> <p>13 testimony with Mr. Morris, I believe that was</p> <p>14 the case.</p> <p>15 Q. In fact, you will recall that in</p> <p>16 April of 2019, Mr. Dondero signed a document</p> <p>17 that extended the demand feature of two prior</p> <p>18 notes to May 31, 2019. Do you recall that?</p> <p>19 MS. DEITSCH-PEREZ: I think you</p> <p>20 might -- maybe have the court reporter read</p> <p>21 that back. You might have misspoke.</p> <p>22 (Record read.)</p> <p>23 MR. RUKAVINA: And I did misspeak.</p> <p>24 Q. I meant to say to May 31, 2021. Do</p> <p>25 you recall that, sir?</p>

<p style="text-align: right;">Page 302</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Yes.</p> <p>5 MR. RUKAVINA: And, Mr. Nguyen, just</p> <p>6 so that the record is clear, will you please</p> <p>7 pull up my Exhibit Alpha 10, A10.</p> <p>8 (Exhibit A10 marked.)</p> <p>9 Q. You don't have this one in front of</p> <p>10 you, Mr. Waterhouse? This is the one that</p> <p>11 Mr. Morris used earlier. Do you see that</p> <p>12 document, sir?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And this is what you were testifying</p> <p>15 about before when Mr. Morris was asking you.</p> <p>16 Do you remember that?</p> <p>17 A. Yes.</p> <p>18 Q. So here is my question for you,</p> <p>19 Mr. Waterhouse: As the chief financial officer</p> <p>20 of Highland, was it prudent for Highland less</p> <p>21 than three weeks later to be lending</p> <p>22 \$7.2 million to an insolvent entity that</p> <p>23 couldn't even then pay its debts back to</p> <p>24 Highland?</p> <p>25 MS. DANDENEAU: Objection to form.</p>	<p style="text-align: right;">Page 303</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. Sorry, I just want to make sure --</p> <p>5 are you asking me, did you say, was it prudent</p> <p>6 for Highland to loan \$7.4 million to HCMFA a</p> <p>7 few weeks after this document was executed?</p> <p>8 Q. Yes, and at a time when HCMFA's</p> <p>9 liabilities exceeded its assets.</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't -- it is odd. I don't know.</p> <p>13 MR. RUKAVINA: You can take this</p> <p>14 exhibit down, Mr. Nguyen.</p> <p>15 Q. Do you recall asking anyone,</p> <p>16 Mr. Dondero or -- or anyone outside as to</p> <p>17 whether Highland ought to be lending</p> <p>18 \$7.4 million to HCMF regarding HCMF's</p> <p>19 creditworthiness?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I don't recall.</p> <p>23 Q. Did you receive personally any of</p> <p>24 that \$7.4 million?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 304</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Did you even --</p> <p>3 MR. MORRIS: I didn't hear that</p> <p>4 question, sir.</p> <p>5 MR. RUKAVINA: The one that he</p> <p>6 answered, John, or my new one?</p> <p>7 MR. MORRIS: No, no, your question,</p> <p>8 Davor.</p> <p>9 MR. RUKAVINA: I had asked him</p> <p>10 whether he received any of the</p> <p>11 \$7.4 million. He said no.</p> <p>12 MR. MORRIS: Yeah. I thought there</p> <p>13 was a question after that. Maybe I was</p> <p>14 mistaken. I apologize.</p> <p>15 MR. RUKAVINA: I had started a new</p> <p>16 question, so here, let me start the new</p> <p>17 question again.</p> <p>18 Q. Did you personally receive any</p> <p>19 direct benefit from those two notes for</p> <p>20 \$7.4 million?</p> <p>21 A. No.</p> <p>22 Q. Did you ever personally consider</p> <p>23 yourself obligated to repay either or both of</p> <p>24 those notes?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 305</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Pull up those notes</p> <p>3 again, Mr. Nguyen.</p> <p>4 Q. You can have them in front of you,</p> <p>5 Exhibit 7, Mr. Waterhouse, whatever is easier</p> <p>6 for you. If you go to your signature page, my</p> <p>7 question to you is, why did you not include</p> <p>8 your title as treasurer by your name, Frank</p> <p>9 Waterhouse?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I didn't -- I didn't draft this</p> <p>12 document.</p> <p>13 Q. So you relied on whoever drafted it</p> <p>14 to draft it correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. But back then when you signed</p> <p>17 this, did it ever cross your mind that you were</p> <p>18 the maker on these notes?</p> <p>19 A. No.</p> <p>20 Q. Back then when you signed this</p> <p>21 document, did it ever cross your mind that you</p> <p>22 could be a co-obligor on these notes?</p> <p>23 A. No. I didn't receive \$7.4 million,</p> <p>24 I mean...</p> <p>25 Q. But can you say that HCMFA received</p>



<p style="text-align: right;">Page 306</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 \$7.4 million?</p> <p>3 A. I would have to go back and look and</p> <p>4 check in, you know, the -- the financial</p> <p>5 records and the bank statements.</p> <p>6 MR. RUKAVINA: You can take this</p> <p>7 exhibit down, Mr. Nguyen.</p> <p>8 Q. Mr. Waterhouse, I'm not trying to be</p> <p>9 a smart-ass, but if the law says that because</p> <p>10 of the way that you signed this promissory</p> <p>11 note, if that is what the law says, that that</p> <p>12 made you personally -- personally liable, then</p> <p>13 you would agree with me that that was never</p> <p>14 your intent?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. That was never -- I wouldn't sign a</p> <p>18 note and not get consideration in return.</p> <p>19 Q. So putting all other issues aside,</p> <p>20 if the law -- if the law says that you were</p> <p>21 liable for those notes because of how you</p> <p>22 signed them, then would you agree with me that</p> <p>23 these notes are a mistake?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">Page 307</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form.</p> <p>4 A. Yes.</p> <p>5 Q. So do you agree with me that it's</p> <p>6 odd -- I think that is the word you used --</p> <p>7 that Highland would be loaning \$7.4 million a</p> <p>8 few weeks after that extension to an entity</p> <p>9 whose liabilities exceeded its assets, and you</p> <p>10 would agree with me that it was never your</p> <p>11 intention to be in any way liable for these two</p> <p>12 promissory notes; correct?</p> <p>13 MR. MORRIS: Objection to the form</p> <p>14 of the question.</p> <p>15 A. Sorry, you -- you asked a lot there.</p> <p>16 MR. RUKAVINA: I will strike it and</p> <p>17 I will move on.</p> <p>18 Let's go to -- pull up Exhibit 9,</p> <p>19 please Mr. Nguyen -- Alpha 9, I'm sorry, Alpha</p> <p>20 9, A9.</p> <p>21 (Exhibit A9 marked.)</p> <p>22 Q. Sir, take a moment to look at this,</p> <p>23 but this is an email, and you will see attached</p> <p>24 July 31, 2020 affiliate notes.</p> <p>25 Do you see that attachment?</p>
<p style="text-align: right;">Page 308</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you see an entry for</p> <p>4 Highland Capital Management Fund Advisors?</p> <p>5 MR. MORRIS: I'm sorry, hold on.</p> <p>6 Where are you looking?</p> <p>7 MR. RUKAVINA: Last page, John.</p> <p>8 MR. MORRIS: Is it the page on the</p> <p>9 screen?</p> <p>10 MR. RUKAVINA: Oh, I'm sorry.</p> <p>11 Mr. Nguyen just did it. Yes, the last page</p> <p>12 there.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 Q. Do you see an entry there for HCMFA?</p> <p>15 A. Yes.</p> <p>16 Q. About \$10.5 million.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And, now, do you have any</p> <p>20 explanation for why if HCMFA owed \$7.4 million,</p> <p>21 plus the 5.3 million that had been extended,</p> <p>22 why that amount was only 10.5 million?</p> <p>23 A. I don't know. Okay.</p> <p>24 MR. RUKAVINA: Close this one and</p> <p>25 pull up, Mr. Nguyen, the schedules,</p>	<p style="text-align: right;">Page 309</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 schedule of assets. What exhibit is this</p> <p>3 of ours, Mr. Nguyen?</p> <p>4 MR. NGUYEN: This is A11.</p> <p>5 MR. RUKAVINA: Oh, this will be A11.</p> <p>6 (Exhibit A11 marked.)</p> <p>7 Q. You don't have this in front of you,</p> <p>8 Mr. Waterhouse?</p> <p>9 A. Okay.</p> <p>10 Q. This is what Mr. Morris used</p> <p>11 earlier. Do you remember looking at this with</p> <p>12 Mr. Morris?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: You might have to</p> <p>15 zoom in a little. Okay.</p> <p>16 Q. Now, I see Affiliate Note A, B, and</p> <p>17 C.</p> <p>18 Do you have any recollection as to</p> <p>19 why the names of the affiliates are omitted?</p> <p>20 A. I don't. I testified earlier that,</p> <p>21 you know, the team worked with DSI in providing</p> <p>22 these. I -- I don't -- I don't know.</p> <p>23 Q. Can we deduce -- is it logical to</p> <p>24 deduce that Affiliate Note A would be NexPoint</p> <p>25 given its size of \$24.5 million?</p>



<p style="text-align: right;">Page 310</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. MORRIS: Objection to the form</p> <p>3 of the question.</p> <p>4 A. I mean, it -- it is a -- it is -- it</p> <p>5 is approximate.</p> <p>6 Q. Well, can we -- can we deduce -- or,</p> <p>7 I'm sorry, strike that.</p> <p>8 Can you, sitting here today,</p> <p>9 logically conclude that Affiliate Note B or C</p> <p>10 represents HCMFA?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. I don't know. I don't know. I</p> <p>14 can't.</p> <p>15 Q. Okay. As of the petition date, we</p> <p>16 have established that HCMFA, under promissory</p> <p>17 notes, owed \$7.4 million and \$5.3 million to</p> <p>18 the debtor; correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And by my reckoning, that</p> <p>23 would be somewhere approaching \$13 million.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">Page 311</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. It would be \$12.7 million. Is that</p> <p>3 generally correct?</p> <p>4 A. Sorry, the amounts were 7.4, 5.3.</p> <p>5 Q. Yes.</p> <p>6 A. Okay. Yeah, that -- that -- I can</p> <p>7 do that math, yes.</p> <p>8 Q. Do you have any explanation or any</p> <p>9 understanding of why there is no similar entry</p> <p>10 listed here on the schedule of assets filed</p> <p>11 with the bankruptcy court?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. I don't know. We have to look at</p> <p>15 the supporting schedules, like I talked about</p> <p>16 other -- presumably there is -- there is a</p> <p>17 build to the schedule that would provide the</p> <p>18 detail.</p> <p>19 Q. Well, that was going to be my next</p> <p>20 question. You anticipated it.</p> <p>21 MR. RUKAVINA: You can -- you can</p> <p>22 take this down, Mr. Nguyen.</p> <p>23 Q. Do you believe that whenever you and</p> <p>24 your team provided the underlying data to the</p> <p>25 financial advisor that the actual names of the</p>
<p style="text-align: right;">Page 312</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 affiliates for Affiliate Note A, B, and C would</p> <p>3 have been listed there?</p> <p>4 A. Are you asking we provided the names</p> <p>5 to the financial advisor? I don't -- I don't</p> <p>6 understand who the financial advisor is.</p> <p>7 Q. I'm sorry, DSI.</p> <p>8 Let me ask the question this way,</p> <p>9 Mr. Waterhouse.</p> <p>10 Whenever you provided information</p> <p>11 about the affiliate notes to DSI, do you</p> <p>12 believe that you would have included the actual</p> <p>13 names of the affiliates, you or your team, or</p> <p>14 that you would have done the Affiliate Note A,</p> <p>15 Note B, Note C?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 MS. DANDENEAU: Objection to the</p> <p>19 form.</p> <p>20 A. We -- like I testified earlier, when</p> <p>21 we were -- we gave everything to -- to DSI. We</p> <p>22 were giving all of our records, all of our</p> <p>23 files, everything to DSI. We weren't redacting</p> <p>24 information or saying, hey, here is a note,</p> <p>25 here is Affiliate Note A or B.</p>	<p style="text-align: right;">Page 313</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I mean, it was -- our job and our</p> <p>3 focus -- and I testified in court back in 2019;</p> <p>4 right -- was -- was to be transparent and, you</p> <p>5 know, get DSI up to speed on -- on the matters</p> <p>6 at Highland. So I can't see us redacting at</p> <p>7 that point.</p> <p>8 MR. RUKAVINA: Mr. Nguyen, will you</p> <p>9 please pull up Mr. Morris' Exhibit 36.</p> <p>10 Just the very first page, the very top</p> <p>11 email. You might zoom in a little bit.</p> <p>12 Q. Now, you recall being asked about</p> <p>13 this by Mr. Morris?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And you wrote: The HCMFA note is a</p> <p>16 demand note.</p> <p>17 You wrote that; right?</p> <p>18 A. Yes.</p> <p>19 Q. And, in fact, weren't there by that</p> <p>20 point in time several notes?</p> <p>21 A. Yes, there were. Again, I don't --</p> <p>22 I don't remember everything specifically. I</p> <p>23 mean --</p> <p>24 Q. I understand. I understand.</p> <p>25 So this is an example where -- where</p>

<p style="text-align: right;">Page 314</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you might have made a mistake by referring to a</p> <p>3 singular instead of a plural; right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And you -- you wrote -- a</p> <p>6 couple of sentences later, you wrote: There</p> <p>7 was an agreement between HCMLP and HCMFA the</p> <p>8 earliest they could demand is May 2021.</p> <p>9 You wrote that; right?</p> <p>10 A. Yes.</p> <p>11 Q. But I think you -- you agreed with</p> <p>12 Mr. Morris that that can't possibly apply to</p> <p>13 the May 2019 notes, can it?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question. That is not what he</p> <p>16 testified to.</p> <p>17 Q. Let me ask -- let me ask a different</p> <p>18 question.</p> <p>19 Sitting here today -- or if you can</p> <p>20 answer me from your memory on October 6,</p> <p>21 2020 -- did the April acknowledgment that</p> <p>22 extended the maturity date apply to the</p> <p>23 May 2019 notes also?</p> <p>24 A. I don't recall specifically.</p> <p>25 Q. Well, you recall that the notes that</p>	<p style="text-align: right;">Page 315</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you signed were demand notes; right?</p> <p>3 A. Yes.</p> <p>4 Q. Do you find it logical, based on</p> <p>5 your experience, that had they intended to have</p> <p>6 a different or a set maturity date, you would</p> <p>7 have instructed that that set maturity date be</p> <p>8 included instead of a demand feature?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Sorry, just want to make sure I</p> <p>12 understand. You are saying that -- that the</p> <p>13 \$5 million note, the \$2.4 million note, if</p> <p>14 those were supposed to be a term note, that I</p> <p>15 would have made sure that those were a term</p> <p>16 note?</p> <p>17 Q. I'm saying -- I'm saying,</p> <p>18 Mr. Waterhouse, that on May the 2nd and May the</p> <p>19 3rd, 2019, if you intended that those two</p> <p>20 promissory notes could not be called until May</p> <p>21 2021, would you have included such language in</p> <p>22 those two promissory notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I guess -- I'm sorry, I don't recall</p>
<p style="text-align: right;">Page 316</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 putting language in those May notes. I don't</p> <p>3 remember what language you are referring to.</p> <p>4 Q. Well, let's read this again.</p> <p>5 There was an agreement between HCMLP</p> <p>6 and HCMFA the earliest they could demand is May</p> <p>7 2021.</p> <p>8 Do you recall that agreement?</p> <p>9 A. Yes, that was the agreement we</p> <p>10 looked at earlier; correct?</p> <p>11 Q. Okay. Yes.</p> <p>12 Do you -- do you understand now that</p> <p>13 that agreement that we looked at earlier also</p> <p>14 applied to the May 2019 notes that you signed?</p> <p>15 A. I don't -- I don't know.</p> <p>16 Q. But as of October 6, 2020, you're</p> <p>17 writing that there is one demand note and</p> <p>18 you're categorizing that demand note as not</p> <p>19 being demandable on May 2021; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you know now that you made at</p> <p>22 least one mistake in this email; correct?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 317</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: You can pull this</p> <p>3 down, Mr. Nguyen.</p> <p>4 Q. So, Mr. Waterhouse, you don't</p> <p>5 remember Mr. Dondero telling you to make these</p> <p>6 loans or not. HCMLP was loaning \$7.4 million</p> <p>7 to someone that their assets were less than</p> <p>8 their liabilities.</p> <p>9 We don't see on the July list of</p> <p>10 notes, where there is \$12.7 million of notes,</p> <p>11 we don't see that on the bankruptcy schedules,</p> <p>12 and we have this Exhibit 36 where you are</p> <p>13 confused.</p> <p>14 Are you prepared to tell me, sir,</p> <p>15 today that you might have made a mistake in</p> <p>16 executing those two promissory notes?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. I -- I don't know.</p> <p>20 Q. And if it turns out that you're</p> <p>21 personally liable for those promissory notes,</p> <p>22 it would certainly be a mistake, wouldn't it?</p> <p>23 MS. DANDENEAU: Objection to the</p> <p>24 form.</p> <p>25 MR. MORRIS: Join.</p>

<p style="text-align: right;">Page 318</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. If Mr. Dondero testifies that he</p> <p>4 never told you to make these loans, would you</p> <p>5 disagree with his testimony?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Like I testified earlier with my</p> <p>9 conversation with Mr. Dondero, all I recall is</p> <p>10 he said, get the money from Highland.</p> <p>11 Q. And if Mr. Dondero testifies that</p> <p>12 he, in consultation with other senior personnel</p> <p>13 at Highland, decided that Highland needed to</p> <p>14 pay HCMFA \$7.4 million as compensation for the</p> <p>15 NAV error and not a loan, would you have any</p> <p>16 reason to disagree with Mr. Dondero?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. If that was -- if that was his</p> <p>20 intent, yes, it would -- I would --</p> <p>21 Q. Do you have any reason to disagree</p> <p>22 with him?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. If that was his intent, I don't</p>	<p style="text-align: right;">Page 319</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 know. I don't know how I disagree with that.</p> <p>3 Q. And just to confirm, you don't</p> <p>4 remember ever asking Mr. Dondero whether you</p> <p>5 should have two promissory notes prepared?</p> <p>6 A. No.</p> <p>7 Q. And you don't remember discussing</p> <p>8 with Mr. Dondero what the terms of those two</p> <p>9 promissory notes should be?</p> <p>10 A. I don't recall -- I testified all I</p> <p>11 recall is he said, get the money from Highland.</p> <p>12 I don't -- the -- the terms of the note, I</p> <p>13 don't recall ever having a discussion around</p> <p>14 the terms of the note, but since I don't draft</p> <p>15 the notes, that -- there could have been a</p> <p>16 conversation with other people later.</p> <p>17 Q. Do you have any memory of whether</p> <p>18 after the notes were drafted, but before you</p> <p>19 signed them, that you communicated with</p> <p>20 Mr. Dondero in any way to just confirm or -- or</p> <p>21 get his blessing or ratification to signing</p> <p>22 those notes?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>
<p style="text-align: right;">Page 320</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Again, the only thing you remember,</p> <p>3 sitting here today, was Mr. Dondero said, get</p> <p>4 the money from Highland, and that is it, that</p> <p>5 is all you remember?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. I testified to that several times.</p> <p>9 This was over two years ago. A lot has</p> <p>10 happened. That is all I recall.</p> <p>11 Q. And help me here. I'm not very</p> <p>12 technologically astute. When you -- and I -- I</p> <p>13 recognize that you do it rarely, but when you</p> <p>14 sign a document electronically, do you believe</p> <p>15 that there is an electronic record of you</p> <p>16 having authorized or signed a document</p> <p>17 electronically?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. I -- I don't know the tech answer to</p> <p>21 that, but, you know, since I don't have -- I</p> <p>22 don't ever attach my signature block</p> <p>23 electronically, my assistant would have done</p> <p>24 that, and if that is done over email like we</p> <p>25 did several times -- you know, multiple,</p>	<p style="text-align: right;">Page 321</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 multiple times over COVID, she would attach my</p> <p>3 signature block and then email it out to</p> <p>4 whatever party.</p> <p>5 Q. What was your assistant's name in</p> <p>6 May 2019?</p> <p>7 A. It was Naomi Chisum.</p> <p>8 Q. Is she the only one? I'm sorry, was</p> <p>9 she your only assistant that would have maybe</p> <p>10 facilitated logistically something like you</p> <p>11 just described?</p> <p>12 A. You know, she was out on maternity</p> <p>13 leave at some point. I don't -- I don't recall</p> <p>14 those dates where she was out for maternity</p> <p>15 leave. There was -- there were folks backing</p> <p>16 her up. I don't recall specifically who</p> <p>17 those -- who those, you know, administrative</p> <p>18 assistants were, and I don't recall</p> <p>19 specifically if she was out during this time on</p> <p>20 maternity leave.</p> <p>21 I do know that that she was out for</p> <p>22 a period of time, or who knows, or she could</p> <p>23 have been on vacation that day or, you know, I</p> <p>24 don't know.</p> <p>25 Q. Switching gears now, the two</p>

<p style="text-align: right;">Page 322</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 complaints that have been filed that is against</p> <p>3 HCMFA and NexPoint, did you see any drafts of</p> <p>4 those complaints before they were filed?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question, and to the extent that you</p> <p>7 had any communications with counsel or you</p> <p>8 were shown drafts of the complaints by</p> <p>9 counsel while you were employed by</p> <p>10 Highland, I direct you not to answer.</p> <p>11 A. I -- I reviewed documents yesterday</p> <p>12 with counsel here. I believe that is the first</p> <p>13 time I have ever seen those.</p> <p>14 Q. Okay. Did you ever discuss with</p> <p>15 Mr. Seery these two lawsuits before or after</p> <p>16 they were filed?</p> <p>17 A. I don't recall.</p> <p>18 Q. Were you ever interviewed by legal</p> <p>19 counsel, to your knowledge, about these</p> <p>20 promissory notes before the complaints were</p> <p>21 filed? Without going into what was said, were</p> <p>22 you ever interviewed by legal counsel?</p> <p>23 MR. MORRIS: Objection to the form</p> <p>24 of the question.</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 323</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Obviously with COVID, it changed,</p> <p>3 but -- but before COVID, did you used to meet</p> <p>4 with Mr. Seery from time to time in-person?</p> <p>5 A. Yeah, I mean, so before COVID -- so</p> <p>6 we're talking kind of late March, early April,</p> <p>7 right, there was about -- I don't remember the</p> <p>8 specific date when the board for Highland was</p> <p>9 appointed. I believe it was around February of</p> <p>10 2020, so maybe there was a month-and-a-half,</p> <p>11 two-month window where we were meeting</p> <p>12 in-person or, you know, like we were actually</p> <p>13 in the office, excuse me, we were in the</p> <p>14 office.</p> <p>15 And, you know, when they were first</p> <p>16 appointed, the board members and Mr. Seery</p> <p>17 were -- were definitely down here more</p> <p>18 in-person.</p> <p>19 Q. Did you ever see Mr. Seery taking</p> <p>20 written notes of -- of his meetings with you or</p> <p>21 others?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you recall on any Zoom or video</p> <p>24 conference with Mr. Seery, seeing him take</p> <p>25 notes, written notes?</p>
<p style="text-align: right;">Page 324</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. The Zoom calls we had, I don't</p> <p>3 recall having seen video or, you know, or if it</p> <p>4 was on Zoom, I just remember it being -- well,</p> <p>5 no, you know what, there were some -- you know,</p> <p>6 I take that back.</p> <p>7 So there were -- there were some</p> <p>8 times that I did remember seeing Mr. Seery</p> <p>9 on -- on some of the Zoom calls.</p> <p>10 Q. Well, let me --</p> <p>11 A. I don't -- sorry, I'm thinking. I'm</p> <p>12 thinking -- I'm going back. I'm trying to</p> <p>13 process this.</p> <p>14 Q. I can make it much quicker,</p> <p>15 Mr. Waterhouse. I have heard -- I have heard</p> <p>16 that Mr. Seery is a copious note taker.</p> <p>17 Do you have any knowledge about</p> <p>18 that?</p> <p>19 A. No.</p> <p>20 Q. Okay. Switching gears yet again,</p> <p>21 and this will be last theme. Do you need a</p> <p>22 restroom break, or are you good to go for</p> <p>23 another half an hour?</p> <p>24 MS. DEITSCH-PEREZ: I need a</p> <p>25 restroom break.</p>	<p style="text-align: right;">Page 325</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MR. RUKAVINA: Can we make it five</p> <p>3 minutes?</p> <p>4 THE WITNESS: Five minutes would be</p> <p>5 great.</p> <p>6 VIDEOGRAPHER: We're going off the</p> <p>7 record at 5:53 p.m.</p> <p>8 (Recess taken 5:53 p.m. to 5:59 p.m.)</p> <p>9 VIDEOGRAPHER: We are back on the</p> <p>10 record at 5:59 p.m.</p> <p>11 Q. Mr. Waterhouse, I had asked you</p> <p>12 earlier about contracts between HCMFA and the</p> <p>13 debtor, and now I'm going to talk about</p> <p>14 contracts between the debtor and NexPoint</p> <p>15 Advisors. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. Now, were there contracts similar to</p> <p>18 the ones with HCMFA that NexPoint had in the</p> <p>19 nature of employee reimbursement and shared</p> <p>20 services?</p> <p>21 A. Yes, they -- NexPoint Advisors and</p> <p>22 Highland Capital Management Fund Advisors had</p> <p>23 cost reimbursement and shared services</p> <p>24 agreements with Highland Capital Management,</p> <p>25 L.P.</p>

<p style="text-align: right;">Page 326</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that shared services</p> <p>3 agreement, to the best of your understanding,</p> <p>4 in place as of December 31, 2020?</p> <p>5 A. It was -- it was terminated at some</p> <p>6 point, and I remember the contracts had</p> <p>7 different termination dates, but I think the --</p> <p>8 the date of termination was January 31st of</p> <p>9 2021, after the termination was put in.</p> <p>10 So yeah, it would be in place at the</p> <p>11 end of the year of December -- it would be in</p> <p>12 place at December 31st, 2020.</p> <p>13 Q. And pursuant to that agreement as of</p> <p>14 December 31st, 2020, was the debtor providing</p> <p>15 what you would describe as back office services</p> <p>16 to NexPoint?</p> <p>17 A. Yes.</p> <p>18 Q. Would those have included accounting</p> <p>19 services?</p> <p>20 A. Yes.</p> <p>21 Q. And as part of those accounting</p> <p>22 services, would the debtor have assisted</p> <p>23 NexPoint with paying its bills?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">Page 327</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. So let's break that up. You were a</p> <p>4 treasurer of NexPoint as well in December of</p> <p>5 2020?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And in December of 2020, did</p> <p>10 NexPoint have its own bank accounts?</p> <p>11 A. Yes.</p> <p>12 Q. And did it use those bank accounts</p> <p>13 to pay various of its obligations?</p> <p>14 A. Yes.</p> <p>15 Q. Did employees of the debtor have the</p> <p>16 ability to cause transfers to be made from</p> <p>17 those bank accounts on behalf of NexPoint?</p> <p>18 A. Yes.</p> <p>19 Q. And is that one of services that the</p> <p>20 debtor provided NexPoint, basically ensuring</p> <p>21 that accounts payable and other obligations</p> <p>22 would be paid?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>
<p style="text-align: right;">Page 328</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. You answered yes?</p> <p>3 A. Yes.</p> <p>4 Q. And the payments, though, whose</p> <p>5 funds would they be made from?</p> <p>6 A. From the bank account of NexPoint</p> <p>7 Advisors. If they were NexPoint advisor</p> <p>8 obligations, it would be made from NexPoint</p> <p>9 Advisors' bank account.</p> <p>10 Q. So let's pull up Exhibit Alpha 1.</p> <p>11 You should have that -- it is my Tab 1 or my</p> <p>12 Exhibit 1.</p> <p>13 (Exhibit A1 marked.)</p> <p>14 Q. So this is a -- this is a series of</p> <p>15 emails, Mr. Waterhouse. Let's look at the</p> <p>16 first page here, November 25, 2020, between</p> <p>17 Kristin Hendrix and yourself.</p> <p>18 Do you see that, sir?</p> <p>19 A. I do.</p> <p>20 Q. And do you see where Ms. Hendrix</p> <p>21 writes: NPA.</p> <p>22 Do you know what NPA stood for?</p> <p>23 A. Yes.</p> <p>24 Q. And what does it stand for?</p> <p>25 A. NexPoint Advisors.</p>	<p style="text-align: right;">Page 329</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And was that how you-all internally</p> <p>3 at Highland refer to NexPoint Advisors, L.P.?</p> <p>4 A. I mean, yes, amongst other things.</p> <p>5 Q. And she writes at the bottom of her</p> <p>6 email: Okay to release?</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. So what --</p> <p>10 MR. MORRIS: Hold on one second.</p> <p>11 Okay. Go ahead.</p> <p>12 MR. RUKAVINA: Yeah.</p> <p>13 Q. So what is -- what is Ms. Hendrix</p> <p>14 here on November 25 asking of you?</p> <p>15 A. She is asking me -- so she -- these</p> <p>16 are -- these are payments -- typically we would</p> <p>17 do an accounts payable run every week at the</p> <p>18 end of every Friday. But looking at this date,</p> <p>19 it is Wednesday, November 25th, which means, to</p> <p>20 me, it is likely Thanksgiving weekend.</p> <p>21 So this is the day before</p> <p>22 Thanksgiving, so this is the last kind of --</p> <p>23 kind of day before the holidays and vacation</p> <p>24 and things of that nature. So it is</p> <p>25 effectively the Friday of that week.</p>



<p style="text-align: right;">Page 330</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 So she is -- she is putting in all</p> <p>3 the payments for the week because we batch</p> <p>4 payments weekly. And these are the payments</p> <p>5 that go out that week, and she is informing me</p> <p>6 of the payments and -- you know, again, at the</p> <p>7 bottom of the email, she is asking for my okay</p> <p>8 to -- to release these payments in the wire</p> <p>9 system.</p> <p>10 Q. So these would be accounts payable</p> <p>11 of NexPoint?</p> <p>12 A. I mean, it would be accounts payable</p> <p>13 for all of these entities listed on this email.</p> <p>14 Q. And who was Ms. Hendrix employed by</p> <p>15 in November and December of 2020?</p> <p>16 A. Highland Capital Management.</p> <p>17 Q. Okay. So -- so part of the services</p> <p>18 that NexPoint had contracted with was for</p> <p>19 Highland to ensure that NexPoint timely paid</p> <p>20 its accounts payable; is that accurate?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question. You have got to be</p> <p>23 kidding me.</p> <p>24 Q. Is that accurate?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 331</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And did NexPoint rely on employees</p> <p>3 of the debtor to ensure that NexPoint's</p> <p>4 accounts payable were timely paid?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes.</p> <p>8 MR. RUKAVINA: Let's flip to the</p> <p>9 next page, Mr. Nguyen, if you will please</p> <p>10 scroll to the next page.</p> <p>11 Q. So this is an email similar to the</p> <p>12 prior one, November 30th.</p> <p>13 Do you see where it says, NPA HCMFA,</p> <p>14 USD \$325,000 one-day loan?</p> <p>15 Do you see that, sir?</p> <p>16 A. I do.</p> <p>17 Q. Do you have any memory of what that</p> <p>18 was?</p> <p>19 A. I don't recall what that -- what</p> <p>20 that payment was for.</p> <p>21 Q. Did it sometimes occur that one</p> <p>22 advisor would, on very short-terms, make loans</p> <p>23 to another advisor?</p> <p>24 A. Yes. This -- this -- this occurred</p> <p>25 from -- from -- from time to time. It actually</p>
<p style="text-align: right;">Page 332</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 looking at -- I'm -- I'm looking at the date of</p> <p>3 this email. It is November 30th. It is the</p> <p>4 last day of the month.</p> <p>5 HCMFA has obligations it needs to</p> <p>6 pay to its broker-dealer, which is HCFD. And</p> <p>7 it likely was short funds to make those</p> <p>8 obligations under that -- under its agreement,</p> <p>9 and so it provided a one-day loan because on</p> <p>10 the next business day on 12/1 -- or the next</p> <p>11 business day in December, it would receive</p> <p>12 management fees from the underlying funds that</p> <p>13 it managed and it would be able to pay back</p> <p>14 that loan to NexPoint Advisors.</p> <p>15 Q. So -- so here Ms. Hendrix was</p> <p>16 seeking your approval to transfer \$325,000 from</p> <p>17 NexPoint to HCMFA for a one-day loan; is that</p> <p>18 correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Let's flip to the next page, sir.</p> <p>21 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>22 you will please scroll down.</p> <p>23 Q. Now we have as an entry for</p> <p>24 \$325,000, 11/30 loan payment.</p> <p>25 Do you see that, sir?</p>	<p style="text-align: right;">Page 333</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. And that is probably the loan that</p> <p>4 was approved on the prior page?</p> <p>5 A. Yes, most likely.</p> <p>6 Q. So is it also true, sir, that in</p> <p>7 addition to accounts payable debtor employees</p> <p>8 would be assisting NexPoint with respect to</p> <p>9 paying back its debt?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I mean, yes, for loans of this</p> <p>13 nature, yes.</p> <p>14 Q. Well, what about long term loans?</p> <p>15 Was it reasonable for NexPoint to expect debtor</p> <p>16 employees to ensure that NexPoint timely paid</p> <p>17 its obligations under long-term notes?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of the question.</p> <p>20 MS. DANDENEAU: Objection to form.</p> <p>21 A. I mean, that is one of the things</p> <p>22 that the Highland personnel did provide to the</p> <p>23 advisors. Yes, we would -- we would -- over</p> <p>24 the years, yes, we -- we -- we -- we did do</p> <p>25 that generally. Again, I don't remember</p>



<p style="text-align: right;">Page 334</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 specifically but, yes, generally we -- you</p> <p>3 know, we did do that.</p> <p>4 Q. So do you recall -- and we can pull</p> <p>5 it up, if need be -- that under the NexPoint</p> <p>6 note that Mr. Morris asked you about earlier,</p> <p>7 the one for more than \$30 million, that</p> <p>8 NexPoint was obligated to make an annual</p> <p>9 payment of principal and interest?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yes, it was -- yes, it -- it was an</p> <p>13 amortizing note. It was -- you know, from what</p> <p>14 we reviewed earlier, it was payable by</p> <p>15 December 31st of each year. So -- but are --</p> <p>16 are you asking me --</p> <p>17 Q. I'm just asking you, sir, if you</p> <p>18 recall the note.</p> <p>19 A. Yes, the \$30 million note, yes, we</p> <p>20 reviewed it earlier, yes.</p> <p>21 Q. And do you recall Mr. Morris had you</p> <p>22 go through the fact that NexPoint had made</p> <p>23 payments in years prior to 2020 on that note?</p> <p>24 A. I do.</p> <p>25 Q. And do you believe that employees of</p>	<p style="text-align: right;">Page 335</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the debtor would have played any role in</p> <p>3 NexPoint having made those prior payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. Yes.</p> <p>7 Q. And what role in years prior to 2020</p> <p>8 would employees of the debtor have had with</p> <p>9 respect to NexPoint making that annual payment?</p> <p>10 A. We -- we -- we would have -- I keep</p> <p>11 saying "we." The team would have calculated</p> <p>12 any amounts due under that loan and other</p> <p>13 loans, as -- as standard course.</p> <p>14 We would -- since we provided</p> <p>15 treasury services to the advisors, we would</p> <p>16 inform the -- the -- the -- we informed</p> <p>17 Mr. Dondero of any cash obligations that are</p> <p>18 forthcoming, whether we do cash projections.</p> <p>19 If, you know, any of these payments</p> <p>20 would have -- or, you know, the sum total of</p> <p>21 all of these payments, including any note</p> <p>22 payments, if there were any cash shortfalls, we</p> <p>23 would have informed Mr. Dondero of any cash</p> <p>24 shortfalls. We could adequately plan, you</p> <p>25 know, in instances like that.</p>
<p style="text-align: right;">Page 336</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Or, sorry, we -- I say "we" -- I</p> <p>3 keep saying "we" -- I keep wearing my -- again,</p> <p>4 my -- my treasurer hat.</p> <p>5 But, yes, it is to -- it is to</p> <p>6 inform Mr. Dondero of the obligations of the</p> <p>7 advisors in terms of cash and obligations that</p> <p>8 are -- are upcoming and that -- and that are --</p> <p>9 are scheduled to be paid.</p> <p>10 Q. And would those obligations that are</p> <p>11 upcoming and scheduled to be paid prior to 2020</p> <p>12 have incurred the annual payment on that</p> <p>13 NexPoint \$30 million note?</p> <p>14 MS. DANDENEAU: Objection to form.</p> <p>15 MS. DEITSCH-PEREZ: Davor, I think</p> <p>16 you misspoke. You might want to just</p> <p>17 repeat the question.</p> <p>18 Q. Okay. Let me repeat the question,</p> <p>19 sir.</p> <p>20 Prior to 2020, those services that</p> <p>21 you just described, would that -- on behalf of</p> <p>22 the debtor, would that have included NexPoint's</p> <p>23 payments on the \$30 million note?</p> <p>24 A. Yes.</p> <p>25 Q. So someone at the debtor in treasury</p>	<p style="text-align: right;">Page 337</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 or accounting would have sent some schedule or</p> <p>3 a reminder that a payment would be coming due</p> <p>4 in the future. Is that generally the practice?</p> <p>5 A. Yes, we would -- you know, again, I</p> <p>6 didn't -- I didn't micromanage the teams, but</p> <p>7 we had a -- a corporate accounting calendar</p> <p>8 that we use as kind of a tickler file to keep</p> <p>9 track of payments.</p> <p>10 I actually, you know, don't know how</p> <p>11 actively they're using that in -- in prior to</p> <p>12 2020, but it was actively used at some point.</p> <p>13 We did look at NexPoint cash</p> <p>14 periodically and cash for the other advisors as</p> <p>15 well and payments. You know, we -- payments</p> <p>16 like this would have appeared in our cash</p> <p>17 projections, in the advisor's cash projections.</p> <p>18 And, again, as like I said earlier,</p> <p>19 they would have appeared there, so there would</p> <p>20 be time to plan for making any of these</p> <p>21 payments.</p> <p>22 Q. And based on your experience, would</p> <p>23 it have been reasonable for NexPoint to rely on</p> <p>24 the debtors' employees to inform NexPoint of an</p> <p>25 upcoming payment due on the \$30 million</p>

<p style="text-align: right;">Page 338</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 promissory note?</p> <p>3 MR. MORRIS: Objection to form of</p> <p>4 the question.</p> <p>5 MS. DANDENEAU: Objection to form.</p> <p>6 A. Yes. Yes, they did. I mean, but I</p> <p>7 mean, but I don't think these -- these notes</p> <p>8 were any secret to anybody.</p> <p>9 Q. I understand, and I'm not suggesting</p> <p>10 otherwise.</p> <p>11 MR. RUKAVINA: Please pull up Alpha</p> <p>12 2, Mr. Nguyen.</p> <p>13 (Exhibit A2 marked.)</p> <p>14 Q. Now, this document is similar to the</p> <p>15 ones we've seen before as of December 31, 2020,</p> <p>16 and I don't see under NTA anything there for</p> <p>17 paying the promissory note to Highland.</p> <p>18 Do you see anything like that?</p> <p>19 A. I do not.</p> <p>20 MR. RUKAVINA: You can pull that --</p> <p>21 that exhibit down, Mr. Nguyen.</p> <p>22 Q. You are aware, of course, by now</p> <p>23 that, in fact, NexPoint failed to make the</p> <p>24 payment due December 31, 2020, are you not?</p> <p>25 A. I am aware, and yes, I do understand</p>	<p style="text-align: right;">Page 339</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 it.</p> <p>3 Q. Were you aware that Highland</p> <p>4 accelerated that \$30 million promissory note?</p> <p>5 A. I am aware.</p> <p>6 Q. Were you aware of that acceleration</p> <p>7 at the time that it occurred?</p> <p>8 A. I don't remember specifically.</p> <p>9 Q. Do you recall whether anyone asked</p> <p>10 you -- prior to the acceleration, anyone asked</p> <p>11 you at Highland, what Highland should do with</p> <p>12 respect to the missed payment?</p> <p>13 A. Did anyone ask me what Highland</p> <p>14 should do about the missed payment?</p> <p>15 Q. Yes, before acceleration.</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. I mean, what -- what I recall is</p> <p>19 there was the -- sorry, are you asking me --</p> <p>20 MS. DANDENEAU: Why don't you just</p> <p>21 repeat the question, Mr. Rukavina.</p> <p>22 Q. Let me try again, Mr. Waterhouse,</p> <p>23 let me try again.</p> <p>24 I am saying you're the CFO of</p> <p>25 someone, in this case, Highland, and the</p>
<p style="text-align: right;">Page 340</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 borrower failed to make the required payment.</p> <p>3 Are you with me so far?</p> <p>4 A. I am.</p> <p>5 Q. Did anyone then ask you, what should</p> <p>6 we do with respect to our rights against the</p> <p>7 borrower that missed the payment?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Did you play a role in the decision</p> <p>10 to accelerate that \$30 million promissory note?</p> <p>11 A. I did not.</p> <p>12 Q. Do you recall whether Mr. Seery ever</p> <p>13 asked you before the acceleration as to whether</p> <p>14 he should accelerate the note?</p> <p>15 A. I don't recall.</p> <p>16 Q. And you don't recall when you</p> <p>17 learned of the acceleration itself?</p> <p>18 MR. MORRIS: Objection to the form</p> <p>19 of that question.</p> <p>20 A. It was -- it was sometime in</p> <p>21 early -- in early 2021. I don't remember</p> <p>22 specifically.</p> <p>23 Q. But do you recall whether it was</p> <p>24 after the acceleration had already been</p> <p>25 transmitted?</p>	<p style="text-align: right;">Page 341</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 MS. DANDENEAU: Objection to the</p> <p>3 form of the question.</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you recall in early to mid</p> <p>6 January of 2021, after the default, discussing</p> <p>7 the default with Mr. Dondero?</p> <p>8 A. I do recall discussing with</p> <p>9 Mr. Dondero after December 31, 2020?</p> <p>10 Q. Yes, the fact of the default.</p> <p>11 A. I don't recall.</p> <p>12 MR. RUKAVINA: Let's pull up my</p> <p>13 Exhibit 6, Alpha 6.</p> <p>14 (Exhibit A6 marked.)</p> <p>15 MR. RUKAVINA: And, Mr. Nguyen, if</p> <p>16 you will please scroll down.</p> <p>17 Q. This email chain begins with you</p> <p>18 writing to Ms. Hendrix on January the 12th:</p> <p>19 NexPoint note to HCMLP.</p> <p>20 Do you see that, sir?</p> <p>21 A. I do.</p> <p>22 Q. Were you discussing this same</p> <p>23 \$30 million note we're talking about right now</p> <p>24 with Ms. Hendrix?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 342</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Do you recall what prompted</p> <p>3 you to send that email to her?</p> <p>4 A. Yes, I had -- I had a conversation</p> <p>5 with Jim.</p> <p>6 Q. Okay. And what -- what did you</p> <p>7 discuss with Jim that led to this email chain?</p> <p>8 A. He -- he called me and he said he</p> <p>9 wanted to make payment on the NexPoint note,</p> <p>10 and I didn't -- I didn't know the -- the amount</p> <p>11 offhand, so I reached out to Kristin and got</p> <p>12 the details and relayed that to him.</p> <p>13 Q. And you see you sent that email to</p> <p>14 her at 11:15 a.m. Does that help you remember</p> <p>15 when you had this discussion with Mr. Dondero?</p> <p>16 In other words, was it that morning or the day</p> <p>17 before, or can you -- can you --</p> <p>18 A. No, it was -- it was that morning.</p> <p>19 Q. And do you recall how you had that</p> <p>20 conversation with him?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 Q. By telephone, by email, in-person?</p> <p>24 A. Yeah, he -- he called me. I was at</p> <p>25 home. We were working from home here in</p>	<p style="text-align: right;">Page 343</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 December of 2020. He called me from home. He</p> <p>3 said he was in court. He wanted to -- he asked</p> <p>4 about, you know, making payment on the note and</p> <p>5 the amount, and so I didn't have those numbers</p> <p>6 in front of me, so I said I would get back to</p> <p>7 him. I wanted all the details, so here is</p> <p>8 this -- so I reached out to Kristin.</p> <p>9 Q. And then she gave you that</p> <p>10 \$1,406,000 figure?</p> <p>11 MR. RUKAVINA: Mr. Nguyen, if you</p> <p>12 will scroll up, please.</p> <p>13 A. Yes. Yeah, she -- the \$1,406,112.</p> <p>14 Q. And do you recall whether you</p> <p>15 conveyed that amount to Mr. Dondero?</p> <p>16 A. Yes. I -- I called him back and</p> <p>17 gave him -- gave him this amount.</p> <p>18 Q. Are you aware of whether NexPoint,</p> <p>19 in fact, then made that 1 million 406 and</p> <p>20 change payment?</p> <p>21 A. Yes, they did.</p> <p>22 Q. Did you discuss with Mr. Dondero at</p> <p>23 that time, either the first conference or the</p> <p>24 second conference that day -- strike that.</p> <p>25 When you conveyed the number to</p>
<p style="text-align: right;">Page 344</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Mr. Dondero, was -- was it also on January</p> <p>3 12th?</p> <p>4 A. Sorry, when I conveyed the</p> <p>5 \$1.4 million number?</p> <p>6 Q. Yes.</p> <p>7 A. Yes, yes, it was that -- it was --</p> <p>8 Q. So you had --</p> <p>9 A. It was that point.</p> <p>10 Q. Well, to the best of your</p> <p>11 recollection, you had a conference with</p> <p>12 Mr. Dondero by the telephone in the morning,</p> <p>13 and then another conference with him by</p> <p>14 telephone after 11:40 a.m. that morning?</p> <p>15 A. Yeah, I can't remember -- yeah, it</p> <p>16 was either that morning or it could have been,</p> <p>17 you know, early afternoon, but again, I</p> <p>18 remember calling him back, relaying this</p> <p>19 information to him, and he said, okay, pay --</p> <p>20 you know, make -- make this payment.</p> <p>21 Q. And during either of those two</p> <p>22 calls, did you tell Mr. Dondero anything to the</p> <p>23 effect that making those -- I'm sorry, making</p> <p>24 that payment would not de-accelerate the</p> <p>25 promissory note?</p>	<p style="text-align: right;">Page 345</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No.</p> <p>3 Q. Did you tell him anything to the</p> <p>4 effect that making that payment would not cure</p> <p>5 the default?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss that in any way with</p> <p>8 him?</p> <p>9 A. No, I did not.</p> <p>10 Q. Did he say why he wanted to have</p> <p>11 that \$1.4 million payment made?</p> <p>12 MR. MORRIS: Objection to the form</p> <p>13 of the question.</p> <p>14 A. He -- he -- he didn't go into</p> <p>15 specifics.</p> <p>16 Q. Did he say anything to you to the</p> <p>17 effect that if NexPoint makes that payment,</p> <p>18 then the note will be de-accelerated?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. I don't recall.</p> <p>22 MR. RUKAVINA: You can put this one</p> <p>23 down, Mr. Nguyen.</p> <p>24 Q. And, again, when you say you don't</p> <p>25 recall, you mean you don't remember right now</p>

<p style="text-align: right;">Page 346</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 either way; correct?</p> <p>3 A. Yeah, I don't remember. I don't</p> <p>4 remember us discussing that.</p> <p>5 Q. Now -- and we're almost done, I</p> <p>6 promise. I'm just going to -- I don't know how</p> <p>7 to ask this question, so I'm just going to try</p> <p>8 to do my best.</p> <p>9 Prior to the default on December 31,</p> <p>10 2020, did Mr. Seery ever tell you any words to</p> <p>11 the effect that you or someone at Highland</p> <p>12 should ensure that NexPoint doesn't make its</p> <p>13 payment?</p> <p>14 A. No.</p> <p>15 Q. Did you have any hint or any belief</p> <p>16 that anyone at NexPoint -- I'm sorry, strike</p> <p>17 that.</p> <p>18 Did you have any reason to believe</p> <p>19 that anyone with Highland was actively trying</p> <p>20 to get NexPoint to make that default by not</p> <p>21 paying on December 31?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Are you asking, did any Highland</p> <p>25 employees actively work to make -- to</p>	<p style="text-align: right;">Page 347</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 somehow --</p> <p>3 Q. Yes. Let me take a step back. Let</p> <p>4 me take a step back.</p> <p>5 So you are aware now that as a</p> <p>6 result of that default, what was still some</p> <p>7 25-year note was accelerated and became</p> <p>8 immediately due. You are aware of that now;</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And can you see how someone at</p> <p>12 Highland might actually have been pleased with</p> <p>13 that development?</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. Not that they were -- not that they</p> <p>16 were pleased, but you can see how someone at</p> <p>17 Highland might have been pleased with that</p> <p>18 development?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 MS. DANDENEAU: Object to form.</p> <p>22 A. I don't know how they would have</p> <p>23 reacted to that.</p> <p>24 Q. Okay. But you're not -- you're not</p> <p>25 aware of any instructions or any actions being</p>
<p style="text-align: right;">Page 348</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 given or taken at Highland by Mr. Seery, the</p> <p>3 independent board, DSI, that -- that would have</p> <p>4 basically led Highland to ensure that NexPoint</p> <p>5 would fail to make that payment?</p> <p>6 A. I'm not aware.</p> <p>7 Q. In other words, there wasn't a trick</p> <p>8 or a settlement; right?</p> <p>9 MS. DEITSCH-PEREZ: Objection to</p> <p>10 form.</p> <p>11 MS. DANDENEAU: Object to form.</p> <p>12 MR. MORRIS: Object to form.</p> <p>13 A. I'm not aware.</p> <p>14 Look, I'm not aware. I'm not in</p> <p>15 every conversation. I mean, and I'm just --</p> <p>16 again, I'm sitting at home. It is the end of</p> <p>17 the year. Again, I'm not aware.</p> <p>18 Q. That is a perfectly legitimate</p> <p>19 answer. I don't know why -- why you think</p> <p>20 otherwise.</p> <p>21 Okay. Just give me one second to</p> <p>22 compose my thoughts.</p> <p>23 MS. DEITSCH-PEREZ: While you're</p> <p>24 taking your one second, why don't we take</p> <p>25 three minutes. I will be right back.</p>	<p style="text-align: right;">Page 349</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 VIDEOGRAPHER: Do we want to go off</p> <p>3 the record?</p> <p>4 MR. RUKAVINA: Yes.</p> <p>5 VIDEOGRAPHER: All right. We're</p> <p>6 going off the record at 6:27 p.m.</p> <p>7 (Recess taken 6:27 p.m. to 6:30 p.m.)</p> <p>8 VIDEOGRAPHER: We are back on the</p> <p>9 record at 6:30 p.m.</p> <p>10 MR. HORN: Is Deb back?</p> <p>11 MS. DANDENEAU: Are you asking about</p> <p>12 me? I'm here.</p> <p>13 MR. HORN: Oh, okay. I don't see</p> <p>14 you, sorry.</p> <p>15 Q. Actually, yeah, Mr. Waterhouse, so</p> <p>16 when you had --</p> <p>17 MS. DANDENEAU: Are you asking about</p> <p>18 Deb Dandeneau or Deborah? I mean, there</p> <p>19 are a lot -- as we talked about, a lot of</p> <p>20 Debs. I'm here.</p> <p>21 MS. DEITSCH-PEREZ: I'm here.</p> <p>22 MR. HORN: Yes, I was asking about</p> <p>23 DDP.</p> <p>24 MS. DEITSCH-PEREZ: Oh, DDP is here.</p> <p>25 MR. HORN: Okay. Here we go. I'm</p>

<p style="text-align: right;">Page 350</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 going back on mute.</p> <p>3 MS. DANDENEAU: Get the right</p> <p>4 nomenclature.</p> <p>5 Q. Mr. Waterhouse, on January 12th,</p> <p>6 2021, when you had those talks with Mr. Dondero</p> <p>7 about the \$1.4 million payment, did you have a</p> <p>8 communication or a conversation with Mr. Seery</p> <p>9 about that payment after January 12th, 2021?</p> <p>10 A. I don't recall.</p> <p>11 Q. Well, in response to Mr. Dondero</p> <p>12 reaching out to you, do you recall on that day,</p> <p>13 January 12th, talking to Mr. Seery or anyone at</p> <p>14 Highland other than the email chain we just saw</p> <p>15 about Mr. Dondero's call with you?</p> <p>16 A. Did I talk to -- I spoke with</p> <p>17 Kristin -- I don't know if I spoke to her. I</p> <p>18 likely spoke to Kristin Hendrix because we had</p> <p>19 to get the wire on NexPoint's behalf to make</p> <p>20 the payment to Highland.</p> <p>21 Q. So it is true, then, that -- that</p> <p>22 employees of the debtor did actually cause that</p> <p>23 payment to be made when it was made after</p> <p>24 January 12th?</p> <p>25 A. Yes, I mean, we -- we -- as I</p>	<p style="text-align: right;">Page 351</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 testified earlier, we provided that accounting</p> <p>3 finance treasury function as -- under the</p> <p>4 shared services agreement. And so once I</p> <p>5 got the -- I talked to Jim, got the approval to</p> <p>6 make this payment, we have to then make the</p> <p>7 payment, or the team does, and so the payment</p> <p>8 was made.</p> <p>9 Q. Okay. But -- okay. And -- and</p> <p>10 sitting here right now, after Jim called you,</p> <p>11 you don't remember talking to anyone other than</p> <p>12 the -- the couple of people you mentioned,</p> <p>13 talking to anyone about something to the effect</p> <p>14 that, hey, Jim wants to make this payment now?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I don't -- I don't recall.</p> <p>18 Q. And does that include legal counsel?</p> <p>19 Without going into any detail, on</p> <p>20 January 12th or before that payment was made,</p> <p>21 did you consult with legal counsel about</p> <p>22 anything having to do with the \$1.4 million</p> <p>23 payment?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. Thank you, sir, for your</p>
<p style="text-align: right;">Page 352</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time.</p> <p>3 MR. RUKAVINA: Pass the witness.</p> <p>4 MR. MORRIS: I just have a few</p> <p>5 questions, if I may.</p> <p>6 MS. DEITSCH-PEREZ: Don't you go at</p> <p>7 the end?</p> <p>8 MR. MORRIS: Oh, I apologize. He is</p> <p>9 your witness. I'm surprised you want to</p> <p>10 ask him questions, but go right ahead.</p> <p>11 MS. DEITSCH-PEREZ: Just have a</p> <p>12 couple of things.</p> <p>13 MR. RUKAVINA: And I will just</p> <p>14 object to that, that he's our witness.</p> <p>15 That's not --</p> <p>16 MR. MORRIS: I'm not talking to you.</p> <p>17 I'm not talking to you.</p> <p>18 MS. DANDENEAU: Also, Mr. Morris, it</p> <p>19 is -- it is --</p> <p>20 MS. DEITSCH-PEREZ: He is not my</p> <p>21 witness. He's been subpoenaed by you.</p> <p>22 Okay?</p> <p>23 That is no offense, Mr. Waterhouse,</p> <p>24 I'm -- I'm not -- okay. Anyway.</p> <p>25 EXAMINATION</p>	<p style="text-align: right;">Page 353</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 BY MS. DEITSCH-PEREZ:</p> <p>3 Q. Good evening. I'm very sorry to be</p> <p>4 going last and I know you have had a long and</p> <p>5 taxing day, so I thank you for indulging me.</p> <p>6 The kinds of services that you</p> <p>7 describe that the -- that Highland provided for</p> <p>8 NexPoint, did Highland also provide similar</p> <p>9 services to that to HCRE and HCMS?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 Q. What kind of services did Highland</p> <p>14 provide to HCRE and HCMS?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 MS. DEITSCH-PEREZ: What is your</p> <p>18 objection, John?</p> <p>19 MR. MORRIS: It is vague and</p> <p>20 ambiguous. Unlike the advisors and</p> <p>21 NexPoint, they actually had shared services</p> <p>22 agreements.</p> <p>23 MS. DEITSCH-PEREZ: I got -- I</p> <p>24 understand your objection. That is fine.</p> <p>25 Q. Let's take them one at a time.</p>



<p style="text-align: right;">Page 354</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 What kinds of services did Highland</p> <p>3 provide to HCRE?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. HCMS, Highland employees provided</p> <p>7 accounting services, treasury management</p> <p>8 services, potentially legal services. I</p> <p>9 don't -- but I wouldn't have been directly</p> <p>10 involved in that. But as far as the teams that</p> <p>11 I manage, it was accounting, treasury, things</p> <p>12 of that nature.</p> <p>13 Q. Okay. And that was for HCM, LLP --</p> <p>14 A. And -- and, sorry, it would also be</p> <p>15 any asset valuation if needed as well.</p> <p>16 Q. Okay. We went back and forth on</p> <p>17 each other and I apologize, so just to clarify.</p> <p>18 You were talking about the services</p> <p>19 that Highland Capital Management provided to</p> <p>20 HCMS; is that right?</p> <p>21 A. HCMS. So, again, yes. And</p> <p>22 accounting, treasury, valuation, and also tax</p> <p>23 services too.</p> <p>24 Q. Okay.</p> <p>25 A. Tax services. Look, I'm expanding</p>	<p style="text-align: right;">Page 355</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 this, their HR services as well.</p> <p>3 Q. Okay. And did that include bill</p> <p>4 paying?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 Q. Did the services that HCM provided</p> <p>8 to HCMS include bill paying?</p> <p>9 MR. MORRIS: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Yes.</p> <p>12 Q. And did the services that HCMLP</p> <p>13 provided to HCMS include scheduling upcoming</p> <p>14 bills?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. And did HCMLP regularly pay -- cause</p> <p>19 to be paid the payments on loans HCMS had from</p> <p>20 HCMLP?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Yes.</p> <p>24 Q. Typically -- if there is a</p> <p>25 typically, how far in advance of due dates did</p>
<p style="text-align: right;">Page 356</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 HCMLP cause HCMS to pay its bills?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I mean, it -- it -- it depend -- it</p> <p>6 depended on the nature of the payment and the</p> <p>7 vendor, but, you know, if there were -- if</p> <p>8 there were larger scheduled payments, you know,</p> <p>9 I would like to give at least 30 days notice.</p> <p>10 And that is -- that is kind of my</p> <p>11 rule of thumb so no one is surprised.</p> <p>12 Q. Okay. And was it generally HCMLP's</p> <p>13 practice to timely pay HCMS' bills?</p> <p>14 MR. MORRIS: Objection to the form</p> <p>15 of the question.</p> <p>16 A. It -- it -- it -- that depended on</p> <p>17 the nature of the payment.</p> <p>18 Q. Okay. And can you explain what you</p> <p>19 mean by that?</p> <p>20 A. Yeah, I mean if -- if it was -- I</p> <p>21 mean -- if there was some professional fees</p> <p>22 that weren't -- you know, they were due but</p> <p>23 they weren't urgent, those fees may not be paid</p> <p>24 as timely as others that have a due date or --</p> <p>25 or things like that.</p>	<p style="text-align: right;">Page 357</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Okay. Are loan payments the kinds</p> <p>3 of thing that HCMLP would pay on time because</p> <p>4 of potential consequences of not paying on</p> <p>5 time?</p> <p>6 MR. MORRIS: Objection to the form</p> <p>7 of the question.</p> <p>8 A. Yes. As I testified earlier, we</p> <p>9 would want to give, you know, notice on -- on</p> <p>10 -- on larger payments and -- and things of that</p> <p>11 nature so we didn't miss due dates.</p> <p>12 Q. Okay. And over the course of time,</p> <p>13 did HCMLP generally pay HCMS' loan payments in</p> <p>14 a timely fashion?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I can't remember specifically, but</p> <p>18 generally, yes.</p> <p>19 Q. Okay. Now, did HCMLP provide</p> <p>20 similar services to HCRE that you have</p> <p>21 described it provided to HCMS?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, but I don't think it -- it</p> <p>25 provided -- I don't think it provided HR</p>



<p style="text-align: right;">Page 358</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 services.</p> <p>3 Q. Can you describe the accounting and</p> <p>4 treasury services that HCMLP provided for HCRE?</p> <p>5 A. Yeah, it -- it would provide</p> <p>6 bookkeeping services on a -- on a periodic</p> <p>7 basis. It would make payments, you know, as</p> <p>8 needed.</p> <p>9 Q. Okay. So did it provide --</p> <p>10 A. And -- and I believe it -- it -- it</p> <p>11 provided tax services as well.</p> <p>12 Q. Okay. And so did it provide the</p> <p>13 same kind of bill -- did HCMLP provide the same</p> <p>14 kind of bill-paying services for HCRE that it</p> <p>15 provided for HCMS and NexPoint?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Yes.</p> <p>19 Q. And over the course of time, did</p> <p>20 HCMLP generally cause to be made the loan</p> <p>21 payments that HCRE owed to HCMLP?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes.</p> <p>25 Q. Did HCMLP make loan payment -- the</p>	<p style="text-align: right;">Page 359</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 loan payment that was due from HCMS to HCMLP in</p> <p>3 December of 2020?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I don't believe that payment --</p> <p>7 payment was made.</p> <p>8 Q. Okay. And when HCMLP caused HCMS in</p> <p>9 the past to make loan payments, whose money did</p> <p>10 it use to make those payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. It was the -- the money in HCMS's</p> <p>14 operating account would be made to that --</p> <p>15 those moneys would be used to make payment to</p> <p>16 Highland Capital Management.</p> <p>17 Q. Okay. And Highland -- is it correct</p> <p>18 that Highland Capital Management personnel had</p> <p>19 the access to HCMS's accounts to be able to</p> <p>20 cause such payments to be made?</p> <p>21 A. Yes, Highland personnel had access</p> <p>22 to those accounts.</p> <p>23 Q. Okay. And so now for HCRE, whose</p> <p>24 money was used when HCMLP caused HCRE</p> <p>25 payments -- loan payments to Highland to be</p>
<p style="text-align: right;">Page 360</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 made?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. It was -- it was cash in HCRE's bank</p> <p>6 account that would be used to make payments to</p> <p>7 Highland Capital Management.</p> <p>8 Q. Okay. And so did Highland Capital</p> <p>9 Management have access to HCRE's funds in order</p> <p>10 to be able to make such payments?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Personnel at Highland Capital</p> <p>14 Management had access to HCRE's bank account to</p> <p>15 effectuate the payments.</p> <p>16 Q. Okay. And was the payment due from</p> <p>17 HCRE to HCMLP due in December of 2020 made?</p> <p>18 A. It --</p> <p>19 Q. In December of 2020.</p> <p>20 A. It was not.</p> <p>21 Q. Okay. And was there money in HCRE's</p> <p>22 account that would have enabled the payment to</p> <p>23 be made had HCM personnel attempted to make the</p> <p>24 payment?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p style="text-align: right;">Page 361</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. I -- I don't recall.</p> <p>4 Q. Do you have any reason to believe</p> <p>5 that either HCRE or HCMS simply didn't have the</p> <p>6 funds on hand to make the December 2020</p> <p>7 payments?</p> <p>8 A. I don't know.</p> <p>9 Q. I guess I'm asking, do you have any</p> <p>10 reason to believe that they didn't have the</p> <p>11 funds?</p> <p>12 A. We managed cash for so many</p> <p>13 different entities and funds, and I don't</p> <p>14 recall, you know, where the cash position was</p> <p>15 for HCRE and HCMS at 12/31/2020.</p> <p>16 Q. Okay.</p> <p>17 A. I just don't recall, and I don't --</p> <p>18 and I don't remember what the loan payment</p> <p>19 obligations were from HCRE to Highland, and</p> <p>20 from HCMS to Highland. I don't recall. I</p> <p>21 don't recall, I mean...</p> <p>22 Q. Let me come at it a different way.</p> <p>23 Were the -- were the payments that would</p> <p>24 otherwise have been due in December of 2020</p> <p>25 made in January of 2021 for HCMS and HCRE?</p>

<p style="text-align: right;">Page 362</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I believe the HCRE payment was made</p> <p>3 in January of 2021. I don't recall any</p> <p>4 payments being made from HCMS to Highland.</p> <p>5 Q. If it -- how is it the HCRE payment</p> <p>6 came to be made? Why did you make it -- why</p> <p>7 did HCM make the payment in January of 2021?</p> <p>8 A. Jim -- Jim called me and instructed</p> <p>9 me to -- to make the payment on behalf of HCRE,</p> <p>10 Jim Dondero -- Jim Dondero.</p> <p>11 Q. Did he seem upset that -- that the</p> <p>12 payment had not been made?</p> <p>13 A. Yeah. On the note that was, you</p> <p>14 know, that was the term note, yes, he -- he was</p> <p>15 displeased that the -- that the payment had not</p> <p>16 been made by year-end.</p> <p>17 Q. Okay. And did you make the -- cause</p> <p>18 the payment to be made as -- as requested?</p> <p>19 A. Yes.</p> <p>20 Q. And did anyone else from HCM</p> <p>21 participate with you in causing the payment to</p> <p>22 be made to -- on the HCRE loan?</p> <p>23 A. Yes. It would have been Kristin</p> <p>24 Hendrix. I -- again, I don't -- as I testified</p> <p>25 earlier, I'm not an officer of HCRE. I don't</p>	<p style="text-align: right;">Page 363</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 believe I'm an authorized signer. So I</p> <p>3 can't -- other personnel have to make payment</p> <p>4 from HCRE to -- to -- to -- to Highland.</p> <p>5 Q. Okay. And in the conversation</p> <p>6 that -- that you had with Mr. Dondero when he</p> <p>7 requested the payment to be made, did you say</p> <p>8 to him words to the effect, Jim, this loan is</p> <p>9 going to stay in default, what are you making</p> <p>10 the payment for, anything like that?</p> <p>11 A. No.</p> <p>12 Q. In fact, did you have the impression</p> <p>13 from him that he thought that the loan would</p> <p>14 be -- the default would be cured by making the</p> <p>15 payment?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. Did I get the impression from Jim</p> <p>19 Dondero that the loan would be cured if the</p> <p>20 payment from HCRE --</p> <p>21 Q. Yeah, if that is what he thought.</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. I didn't get any impression from him</p> <p>25 on that at the time.</p>
<p style="text-align: right;">Page 364</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Do you know whether there was an</p> <p>3 HCMS term loan that had a payment due in</p> <p>4 December of 2020?</p> <p>5 A. I don't recall.</p> <p>6 Q. Okay. And so the reason you don't</p> <p>7 recall whether or not there was a payment in</p> <p>8 January of 2021 is because you just don't</p> <p>9 remember whether there was such a loan at all?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. I don't remember. There is -- there</p> <p>13 is so many notes, and I mean, demands, and I</p> <p>14 don't -- I don't remember. It's a lot to keep</p> <p>15 track in your head.</p> <p>16 Q. I understand, and -- and I hear your</p> <p>17 frustration when you have explained that the</p> <p>18 debtor has your documents and you don't, and so</p> <p>19 I fully appreciate it, and this is no knock on</p> <p>20 you. It's a knock on somebody else on this</p> <p>21 call.</p> <p>22 MR. MORRIS: I move to strike. That</p> <p>23 was pretty obnoxious, but go ahead.</p> <p>24 Q. Okay. But so, Mr. Waterhouse, if --</p> <p>25 if a payment on the HCMS loan was made in</p>	<p style="text-align: right;">Page 365</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 January of 2021, do you think it was part of</p> <p>3 the same conversation where Jim Dondero said,</p> <p>4 hey, why didn't that get paid, please make</p> <p>5 that -- get that payment done?</p> <p>6 MR. MORRIS: I object to the form of</p> <p>7 the question.</p> <p>8 A. Yes. Likely it would have been -- I</p> <p>9 mean, again, I don't recall a payment being</p> <p>10 made, but, you know, again, I don't remember</p> <p>11 everything.</p> <p>12 Q. Okay. Did -- at the time you were</p> <p>13 communicating with Kristin Hendrix about the</p> <p>14 payment being made, whichever payments were</p> <p>15 made in January, did she say anything to you</p> <p>16 about the payments not curing the loan</p> <p>17 defaults?</p> <p>18 A. No.</p> <p>19 Q. Okay. All right. So I'm going to</p> <p>20 take you back to very early in the deposition</p> <p>21 when Mr. Morris was asking you about the --</p> <p>22 the -- the -- the agreement with respect to</p> <p>23 the -- the forgiveness element of the loans, so</p> <p>24 that is just to orient you.</p> <p>25 Do you remember that there was a</p>

<p style="text-align: right;">Page 366</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 time that you and Mr. Dondero were</p> <p>3 communicating about potential means of</p> <p>4 resolving the Highland bankruptcy by what was</p> <p>5 colloquially referred to as a pot plan?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And can you tell me generally</p> <p>8 when that was?</p> <p>9 A. Like mid -- mid 2020, sometime in</p> <p>10 2020, mid 2020.</p> <p>11 Q. Okay. And did the process of trying</p> <p>12 to figure out what the numbers should be</p> <p>13 involve looking at what one should pay for the</p> <p>14 Highland assets?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And did there come a time</p> <p>19 when you were proposing some potential numbers</p> <p>20 and Mr. Dondero said something to you like,</p> <p>21 well, why are you including payment for the</p> <p>22 related party notes, those, you know, were</p> <p>23 likely to be forgiven as part of my deferred</p> <p>24 executive compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p style="text-align: right;">Page 367</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we did have that conversation.</p> <p>4 Q. Okay. Was that conversation in</p> <p>5 connection with trying to figure out the right</p> <p>6 numbers for a pot plan?</p> <p>7 A. Yeah. I mean, it was -- it was -- I</p> <p>8 mean, Jim -- Jim would ask for, you know,</p> <p>9 most -- most recent asset values, you know, for</p> <p>10 Highland, and -- and myself and the team</p> <p>11 provided those to him, so it was in that</p> <p>12 context.</p> <p>13 Q. Okay. And does that refresh your</p> <p>14 recollection that these communications were in</p> <p>15 2020 rather than 2021?</p> <p>16 MR. MORRIS: Objection to the form</p> <p>17 of the question.</p> <p>18 A. The -- the -- the executive</p> <p>19 compensation discussions were definitely in</p> <p>20 2020.</p> <p>21 Q. Okay. Now, did you ever make</p> <p>22 proposals that took into account Jim's comment</p> <p>23 that the notes were likely to end up forgiven</p> <p>24 as part of his compensation?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p style="text-align: right;">Page 368</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes, we -- the team and myself put</p> <p>4 together, you know, asset summaries of Highland</p> <p>5 at various times for all the assets of</p> <p>6 Highland, and not including the notes.</p> <p>7 Q. Okay. And were those presentations</p> <p>8 communicated to -- to Mr. Seery?</p> <p>9 A. No. Well, look, I didn't tell -- I</p> <p>10 didn't tell Mr. Seery. I don't know what</p> <p>11 Mr. Dondero did with the information.</p> <p>12 Q. Okay.</p> <p>13 A. I did not have conversations with</p> <p>14 Mr. Seery.</p> <p>15 Q. Okay. Do you know who saw the</p> <p>16 presentations that you put together that didn't</p> <p>17 include the value of the related party notes?</p> <p>18 A. We're talking presentations -- these</p> <p>19 are -- these are Excel spreadsheets?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I don't know who -- these were given</p> <p>22 to -- to Jim Dondero. I don't know what was</p> <p>23 done with them after that.</p> <p>24 Q. Okay. You also mentioned earlier</p> <p>25 that sometime during your tenure at Highland</p>	<p style="text-align: right;">Page 369</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 you knew of the practice of giving forgivable</p> <p>3 loans to executives.</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 Q. Can you -- can you tell me what you</p> <p>7 recall about that practice?</p> <p>8 MR. MORRIS: Objection to the form</p> <p>9 of the question.</p> <p>10 A. Yes, so there were -- there were --</p> <p>11 during my tenure at Highland, there were loans</p> <p>12 or -- given to employees that were later</p> <p>13 forgiven at a future date and time.</p> <p>14 Q. Okay. And when the loans were</p> <p>15 given, did the notes, to your recollection, say</p> <p>16 anything about the potential forgiveness term?</p> <p>17 MR. MORRIS: Objection to the form</p> <p>18 of the question.</p> <p>19 A. When you say "did the notes," did</p> <p>20 the promissory notes detail the forgiveness?</p> <p>21 Q. Yes.</p> <p>22 A. Not that I recall.</p> <p>23 Q. And until such time as whatever was</p> <p>24 to trigger the forgiveness occurred, were the</p> <p>25 notes bona fide notes as far as you were</p>

<p style="text-align: right;">Page 370</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 concerned?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. Yes, similar to -- yes.</p> <p>6 Q. Okay. You were going to say similar</p> <p>7 to what?</p> <p>8 A. Mr. Morris earlier today showed</p> <p>9 notes of the financial statements about various</p> <p>10 affiliate loans. I -- I -- I do recall these</p> <p>11 notes because I -- at that time personally</p> <p>12 worked on the -- the financial statements of</p> <p>13 Highland. That was, you know, in my role as a</p> <p>14 corporate accountant.</p> <p>15 And there were -- those loans</p> <p>16 were -- to the partners were detailed in the</p> <p>17 notes to the financial statements, similar to</p> <p>18 what we went through earlier today in the prior</p> <p>19 testimony about what we saw with Highland</p> <p>20 and -- and -- and the -- and HCMFA.</p> <p>21 Q. Is it fair to say that on Highland's</p> <p>22 balance sheet there were any number of assets</p> <p>23 that the value of which could be affected by</p> <p>24 subsequent events?</p> <p>25 MR. MORRIS: Objection to the form</p>	<p style="text-align: right;">Page 371</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. Yes. I mean, yes, that -- there</p> <p>4 are. And that is -- yes.</p> <p>5 Q. Okay. And is it typical accounting</p> <p>6 practice that until there is some certainty</p> <p>7 about those potential future events, that asset</p> <p>8 value listed on -- on the books doesn't take</p> <p>9 into account those potential future events?</p> <p>10 MR. MORRIS: Objection to the form</p> <p>11 of the question.</p> <p>12 A. Yeah, if those -- yes. If -- if</p> <p>13 those future events, you know, at the time of</p> <p>14 issuance are not known or knowable, like I</p> <p>15 discussed earlier with, like, market practice,</p> <p>16 asset dislocation, or, you know, I mean, things</p> <p>17 like that, you -- I mean, it -- it could affect</p> <p>18 its fair value --</p> <p>19 Q. Okay.</p> <p>20 A. -- in the future.</p> <p>21 Q. And am I correct you wouldn't feel</p> <p>22 compelled to footnote in every possible change</p> <p>23 in -- in an asset when those possibilities are</p> <p>24 still remote?</p> <p>25 MR. MORRIS: Objection to the form</p>
<p style="text-align: right;">Page 372</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 of the question.</p> <p>3 A. The accounting standard is you have</p> <p>4 to estimate to the best -- you know, to -- to</p> <p>5 the best of your ability, the fair value of an</p> <p>6 asset as of the balance sheet date under --</p> <p>7 under GAAP.</p> <p>8 Q. Did -- strike that.</p> <p>9 Okay. Give me a minute. I'm</p> <p>10 close -- I'm close to done. Let me just go off</p> <p>11 and look at my notes for a second. So take two</p> <p>12 minutes.</p> <p>13 VIDEOGRAPHER: We're going off the</p> <p>14 record at 7:02 p.m.</p> <p>15 (Recess taken 7:02 p.m. to 7:03 p.m.)</p> <p>16 VIDEOGRAPHER: We are back on the</p> <p>17 record at 7:03 p.m.</p> <p>18 Q. Mr. Waterhouse, is it generally your</p> <p>19 understanding that people you work with now</p> <p>20 have been asking the debtor for full and</p> <p>21 unfettered access to their own former files?</p> <p>22 MR. MORRIS: Objection to the form</p> <p>23 of the question.</p> <p>24 A. Yes, I am -- I am generally aware.</p> <p>25 Q. Okay. And do you think you could</p>	<p style="text-align: right;">Page 373</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 have been better prepared for this deposition</p> <p>3 if the debtor had complied with those requests?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question.</p> <p>6 A. I -- I -- I most certainly -- yes.</p> <p>7 I mean, again, these are multiple years,</p> <p>8 multiple years ago, lots and lots of</p> <p>9 transactions.</p> <p>10 You know, we asked about NAV errors</p> <p>11 and, you know, things like that and these</p> <p>12 are -- it would make this process a lot more --</p> <p>13 a lot easier and if we had -- if we had access</p> <p>14 to that.</p> <p>15 Q. Okay. And has the debtor -- is the</p> <p>16 debtor suing you right now?</p> <p>17 A. Yes.</p> <p>18 Q. And is the debtor trying to renege</p> <p>19 on deals that it had previously made with you?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. Sorry, I need to -- it is my</p> <p>23 understanding that the litigation trust is</p> <p>24 suing me. And not being a lawyer, I don't</p> <p>25 know -- is that the debtor?</p>

<p style="text-align: right;">Page 374</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Is that -- I don't know the</p> <p>3 relationship. So, again, I'm not the lawyers.</p> <p>4 I've said many times. But my understanding is</p> <p>5 the litigation trust is suing me. I could be</p> <p>6 wrong there. I don't know.</p> <p>7 Q. Okay. I understand.</p> <p>8 Someone with some connection to the</p> <p>9 Highland debtor has brought a claim against</p> <p>10 you; is that fair?</p> <p>11 MR. MORRIS: Objection to the form</p> <p>12 of the question.</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And is there also some motion</p> <p>15 practice in the bankruptcy where the debtor or</p> <p>16 someone associated with the debtor is</p> <p>17 attempting to undo something that was</p> <p>18 previously resolved with you?</p> <p>19 A. Yes.</p> <p>20 Q. And so in one action somebody is</p> <p>21 associated with the debtors trying to --</p> <p>22 threatening you with trying to take money from</p> <p>23 you, and then in the other -- and trying to --</p> <p>24 and in the other they are threatening not to</p> <p>25 pay you things that had previously been agreed;</p>	<p style="text-align: right;">Page 375</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 is that correct?</p> <p>3 MR. MORRIS: Objection to the form</p> <p>4 of the question.</p> <p>5 A. I want to be -- yes, I -- there</p> <p>6 is -- I'm being sued, again, on -- on something</p> <p>7 that was agreed to with Mr. Seery and myself.</p> <p>8 I don't -- I don't -- I don't own that claim.</p> <p>9 Q. Okay.</p> <p>10 A. To be transparent, I don't own that</p> <p>11 claim. So it is not my personal property.</p> <p>12 Q. Okay.</p> <p>13 A. And -- and being the nonlawyer, I</p> <p>14 don't know how I can get sued for something</p> <p>15 that I don't owe or, like, I don't own</p> <p>16 anything. I'm not the lawyer. But, I mean, if</p> <p>17 that is -- if I'm understanding the facts</p> <p>18 correctly.</p> <p>19 Q. Okay. And the lawsuit that was</p> <p>20 filed that names you, that was just filed</p> <p>21 this -- this past week; is that right?</p> <p>22 MS. DANDENEAU: Ms. Deitsch-Perez, I</p> <p>23 do want to interrupt at this point because</p> <p>24 just as I told Mr. Morris, that this is a</p> <p>25 deposition about the noticed litigation.</p>
<p style="text-align: right;">Page 376</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 I really don't want to go -- go</p> <p>3 afield --</p> <p>4 MS. DEITSCH-PEREZ: Yeah.</p> <p>5 MS. DANDENEAU: -- and open up a</p> <p>6 whole new line of inquiry about the lawsuit</p> <p>7 or the -- the motion and the bankruptcy</p> <p>8 court. We will be here all night.</p> <p>9 MS. DEITSCH-PEREZ: And I</p> <p>10 understand.</p> <p>11 Q. My -- my point is: Do you feel</p> <p>12 like -- like there is some effort by these</p> <p>13 parties related to the debtor to intimidate</p> <p>14 you -- not that you -- I'm not saying you are</p> <p>15 or you aren't.</p> <p>16 But do you feel like there is some</p> <p>17 effort to intimidate you and maybe an effort to</p> <p>18 deter you from being as prepared as you might</p> <p>19 be in this deposition?</p> <p>20 MR. MORRIS: Objection to the form</p> <p>21 of the question.</p> <p>22 A. I was -- I was surprised by the</p> <p>23 lawsuit, by me being named, because, again, I</p> <p>24 don't own the asset and things like that.</p> <p>25 Yeah, I just -- I want to move forward with my</p>	<p style="text-align: right;">Page 377</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 life at Skyview.</p> <p>3 MS. DEITSCH-PEREZ: Thank you.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. If I may, I just have a few</p> <p>8 questions.</p> <p>9 Mr. Waterhouse, we saw a number of</p> <p>10 documents that Mr. Rukavina put up on the</p> <p>11 screen where Ms. Hendrix would send you a</p> <p>12 schedule of payments that were due on behalf of</p> <p>13 certain Highland affiliates.</p> <p>14 Do you remember that?</p> <p>15 A. Yes.</p> <p>16 Q. And in each instance she asked for</p> <p>17 your approval to make the payments; is that</p> <p>18 right?</p> <p>19 A. Yes, she did.</p> <p>20 Q. And was that the -- was that the</p> <p>21 practice in the second half of 2020 whereby</p> <p>22 Ms. Hendrix would prepare a list of payments</p> <p>23 that were due on behalf of Highland associates</p> <p>24 and ask for approval?</p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 378</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. And I think you said that there was</p> <p>3 a -- a --</p> <p>4 A. It was -- I think I testified to</p> <p>5 this earlier when we talked about procedures</p> <p>6 and policy, you know, again, I want to be</p> <p>7 informed of -- of -- of -- of -- of any</p> <p>8 payments that are going out. I want to be made</p> <p>9 aware of these payments, and that was just a</p> <p>10 general policy, not just for 2020.</p> <p>11 Q. Okay. So it went beyond 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the corporate accounting</p> <p>16 group would prepare a calendar that would set</p> <p>17 forth all of the payments that were anticipated</p> <p>18 in the -- in the three weeks ahead; is that</p> <p>19 right?</p> <p>20 A. I -- like I testified earlier, we</p> <p>21 had a corporate calendar that was set up, you</p> <p>22 know, to -- to provide reminders or, you know,</p> <p>23 of anything of any nature, whether it is</p> <p>24 payments or -- or financial statements or, you</p> <p>25 know, whatever it is, you know, to meet</p>	<p style="text-align: right;">Page 379</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 deadlines.</p> <p>3 I don't know how, as I testified</p> <p>4 earlier, how much they were using that</p> <p>5 calendar.</p> <p>6 Q. Okay. But -- but you did get notice</p> <p>7 and a request to approve the payments that were</p> <p>8 coming due on behalf of Highland's affiliates.</p> <p>9 Do I have that right?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 A. I mean, generally, yes. I mean, you</p> <p>12 know, as we saw with these emails, generally, I</p> <p>13 mean, did that encompass everything, no.</p> <p>14 Q. Okay. Do you know why the</p> <p>15 payment -- do you know why there was no payment</p> <p>16 made by NexPoint at the end of 2020?</p> <p>17 A. Yes. There was -- there was -- we</p> <p>18 talked about these agreements between the</p> <p>19 advisors and Highland, the shared services and</p> <p>20 the cost reimbursement agreement.</p> <p>21 And in late 2020, there were</p> <p>22 overpayments, large overpayments that had been</p> <p>23 made over the years on these agreements, and it</p> <p>24 was my understanding that the advisors were --</p> <p>25 were talking with -- like Jim Seery and others</p>
<p style="text-align: right;">Page 380</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 to offset any obligations that the advisors</p> <p>3 owed to Highland as offset to the overpayments</p> <p>4 on these agreements.</p> <p>5 Q. Okay. Did you participate in any of</p> <p>6 those conversations?</p> <p>7 A. I did not.</p> <p>8 Q. Okay. Do you know -- do you recall</p> <p>9 that the -- at the end of November, the debtor</p> <p>10 did notice to the advisors of their intent to</p> <p>11 terminate the shared services agreements?</p> <p>12 A. Like I testified earlier, there</p> <p>13 was -- the agreements weren't identical, from</p> <p>14 what I recall, and there is one that had a</p> <p>15 longer notice period, which I think had a</p> <p>16 60-day notice period. I don't recall which one</p> <p>17 that was, so not all of them were -- notice</p> <p>18 hadn't been given as of November 30th, for all</p> <p>19 of the agreements.</p> <p>20 Q. Upon the receipt of the -- the</p> <p>21 termination notices that you recall, do you</p> <p>22 know if the advisors decided at that point not</p> <p>23 to make any further payments of any kind to</p> <p>24 Highland?</p> <p>25 MR. RUKAVINA: Objection, form.</p>	<p style="text-align: right;">Page 381</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The advisors -- the advisors</p> <p>3 had stopped making payments prior to that</p> <p>4 notice.</p> <p>5 Q. Okay. And how do you know that the</p> <p>6 advisors stopped making -- making payments</p> <p>7 prior to the notice?</p> <p>8 A. I had -- I had a conversation</p> <p>9 with -- with Jim Dondero.</p> <p>10 Q. And did Mr. Dondero tell you that</p> <p>11 the advisors would no longer make payments to</p> <p>12 Highland?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Yes, he -- he -- again, he said</p> <p>16 they -- they -- the advisors have overpaid on</p> <p>17 these agreements, to not make any future</p> <p>18 payments, and that there needs to be offsets,</p> <p>19 and they're working on getting offsets to these</p> <p>20 overpayment.</p> <p>21 Q. Do you know if anybody ever</p> <p>22 instructed Highland's employees to make the</p> <p>23 payment that was due by NexPoint at the end of</p> <p>24 the year?</p> <p>25 A. Did anyone instruct Highland's</p>



<p style="text-align: right;">Page 382</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 employees to make that payment?</p> <p>3 Q. Correct.</p> <p>4 A. Anyone -- not that I'm aware.</p> <p>5 Q. Were any of Highland's employees</p> <p>6 authorized to make the payments on behalf of</p> <p>7 its affiliates -- withdrawn.</p> <p>8 Was any of Highland's employees</p> <p>9 authorized to effectuate the payment on behalf</p> <p>10 of NexPoint that was due at the end of the year</p> <p>11 without getting approval from either you or</p> <p>12 Mr. Dondero?</p> <p>13 A. They had the -- they had the ability</p> <p>14 to make the payment, but they didn't -- you</p> <p>15 know, that -- that payment needed to be</p> <p>16 approved.</p> <p>17 Q. Okay. And it needed to be approved</p> <p>18 by you or Mr. Dondero; is that right?</p> <p>19 A. I mean, I'm not going to make the</p> <p>20 unilateral decision.</p> <p>21 Q. Is that a decision that you</p> <p>22 understood had to be made by Mr. Dondero?</p> <p>23 A. Yes. Sitting back in December of</p> <p>24 2020, the -- that -- there was this off --</p> <p>25 offset negotiation that -- that was happening,</p>	<p style="text-align: right;">Page 383</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 so I mean, until those negotiations were</p> <p>3 resolved, you know, there wasn't any</p> <p>4 payments -- there weren't any payments.</p> <p>5 Q. And -- and there were no payments</p> <p>6 until the negotiations were resolved because</p> <p>7 that was the directive that you received from</p> <p>8 Mr. Dondero; correct?</p> <p>9 A. I don't think he said -- I mean, I</p> <p>10 think -- yeah, I mean -- I'm trying to recall</p> <p>11 the conversation. It was -- you know, there</p> <p>12 is -- there is these negotiations. There's --</p> <p>13 there needs to be these offsets. They're</p> <p>14 talking with the debtor. So, you know, until</p> <p>15 this is resolved, right, I mean, depending on</p> <p>16 how, whatever that resolution was, were we to</p> <p>17 take any action.</p> <p>18 Q. Okay. How about with respect to</p> <p>19 HCMS, did HCMS have a term payment due at the</p> <p>20 end of the year?</p> <p>21 A. Again, I don't -- I don't recall.</p> <p>22 Q. Okay. You discussed briefly two</p> <p>23 payments that were made in January of 2021, one</p> <p>24 on behalf of NexPoint, and one on behalf of</p> <p>25 HCMS. Do I have that right?</p>
<p style="text-align: right;">Page 384</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. No. The two payments I recall were</p> <p>3 NexPoint and HCRE.</p> <p>4 Q. Okay. And those two payments --</p> <p>5 thank you for the correction. And those two</p> <p>6 payments were made because Mr. Dondero</p> <p>7 authorized those payments to be made; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And they hadn't been made before</p> <p>10 that because Mr. Dondero had not authorized</p> <p>11 them to be made?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Yes, because of these negotiations.</p> <p>15 Q. Okay. Just a couple of more</p> <p>16 questions.</p> <p>17 Did anybody, to the best of your</p> <p>18 knowledge, on behalf of HCMFA, ever tell the</p> <p>19 SEC that HCMLP was responsible for the mistakes</p> <p>20 that were made on the TerreStar valuation?</p> <p>21 A. Did anyone from Highland on HCMFA's</p> <p>22 behalf tell the SEC that Highland -- that</p> <p>23 Highland was responsible for there -- I just</p> <p>24 want to make sure --</p> <p>25 Q. It was a little bit different, so</p>	<p style="text-align: right;">Page 385</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 let me try again.</p> <p>3 A. These are very long questions, John.</p> <p>4 I'm not trying to be --</p> <p>5 Q. That is good. Do you know whether</p> <p>6 anybody -- do you know whether anybody on</p> <p>7 behalf of HCMS -- HCMFA ever told the SEC that</p> <p>8 Highland was the responsible party for the</p> <p>9 TerreStar valuation error?</p> <p>10 A. Not that I'm aware.</p> <p>11 Q. Okay. Did anybody on behalf of</p> <p>12 the -- on behalf of HCMFA ever tell the retail</p> <p>13 board that Highland was responsible for the</p> <p>14 TerreStar valuation error?</p> <p>15 A. Not that I'm aware.</p> <p>16 Q. Do you know if HCMFA made an</p> <p>17 insurance claim with respect to the damages</p> <p>18 that were incurred in relation to the TerreStar</p> <p>19 valuation error?</p> <p>20 A. Yes.</p> <p>21 Q. And do you know why they made that</p> <p>22 insurance claim?</p> <p>23 A. Because there was an error. I</p> <p>24 mean --</p> <p>25 Q. Was the insured's claim made -- was</p>

<p style="text-align: right;">Page 386</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 the insurance claim made under HCMFA's policy?</p> <p>3 A. Yes.</p> <p>4 Q. Did HCMFA at any time prior to the</p> <p>5 petition date -- withdrawn.</p> <p>6 You were asked a couple of questions</p> <p>7 where -- where you said that Mr. Dondero told</p> <p>8 you that he was ascribing zero value to the</p> <p>9 notes as part of a pot plan because he believed</p> <p>10 that the notes were part of executive</p> <p>11 compensation.</p> <p>12 Do I have that right?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Have you ever heard that</p> <p>17 before the time that Mr. Dondero told you that</p> <p>18 in the conversation about the pot plan?</p> <p>19 A. Had I heard that prior to my</p> <p>20 conversation with Mr. Dondero?</p> <p>21 Q. Yes.</p> <p>22 A. No, I had not heard that prior.</p> <p>23 Q. Okay. And that was in the context</p> <p>24 of his formulation of the settlement proposal;</p> <p>25 is that right?</p>	<p style="text-align: right;">Page 387</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I mean, generally, yes. You know,</p> <p>3 we were asked to provide asset values, right,</p> <p>4 and he was having settlement discussions.</p> <p>5 Again, I don't know who those went to</p> <p>6 ultimately. I don't recall.</p> <p>7 MR. MORRIS: I have no further</p> <p>8 questions. Thank you very much for your</p> <p>9 patience. I apologize for the late hour.</p> <p>10 MS. DEITSCH-PEREZ: John, you stay</p> <p>11 on about your email when --</p> <p>12 MR. RUKAVINA: Hold on, I'm not</p> <p>13 done.</p> <p>14 MS. DEITSCH-PEREZ: Oh, okay. Davor</p> <p>15 still has questions. Sorry. I was going</p> <p>16 to say both John and Davor, could you stay</p> <p>17 on afterwards just to talk about the</p> <p>18 requests.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. RUKAVINA:</p> <p>21 Q. Mr. Waterhouse, you were just now</p> <p>22 testifying about a discussion you had with</p> <p>23 Mr. Dondero where he said something like no</p> <p>24 more payments.</p> <p>25 Do you remember that testimony?</p>
<p style="text-align: right;">Page 388</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And was that late November or</p> <p>4 early December of 2020?</p> <p>5 A. It was, I would say, first or second</p> <p>6 week of November.</p> <p>7 Q. Okay. Do you recall whether --</p> <p>8 whenever you had that discussion, whether</p> <p>9 Mr. Dondero had already been fired by the</p> <p>10 debtor?</p> <p>11 A. Yes, I -- I believe he was not an</p> <p>12 employee of the debtor anymore at that time.</p> <p>13 Q. And when you were discussing this</p> <p>14 with Mr. Dondero and he said no more payments,</p> <p>15 you were discussing the two shared services</p> <p>16 agreements and employee reimbursement</p> <p>17 agreements we testified -- you testified about</p> <p>18 before; is that correct?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. That is correct.</p> <p>22 Q. And had your office or you -- and we</p> <p>23 will talk at a future deposition about the</p> <p>24 administrative claim.</p> <p>25 But had -- by that time that you</p>	<p style="text-align: right;">Page 389</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 talked to Mr. Dondero, had your office or you</p> <p>3 done any estimate of what the alleged</p> <p>4 overpayments were?</p> <p>5 MR. MORRIS: Objection to the form</p> <p>6 of the question.</p> <p>7 A. Yes, we had -- there was a -- there</p> <p>8 was a detailed analysis that was put together</p> <p>9 by David Klos at the time.</p> <p>10 Q. And do you recall just generally</p> <p>11 what the total amount for both advisors of the</p> <p>12 overpayments was?</p> <p>13 A. It was in excess of \$10 million.</p> <p>14 Q. Was it in excess of \$14 million?</p> <p>15 MR. MORRIS: Objection to the form</p> <p>16 of the question.</p> <p>17 A. I -- I remember it was an</p> <p>18 eight-figure number. I don't remember</p> <p>19 specifically.</p> <p>20 Q. Okay. And did you convey that</p> <p>21 number to Mr. Dondero when you had that</p> <p>22 conversation?</p> <p>23 A. Yes.</p> <p>24 Q. What was his reaction?</p> <p>25 A. I mean, he wasn't happy.</p>

<p style="text-align: right;">Page 390</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Q. Is it fair to say he was upset?</p> <p>3 A. Yes.</p> <p>4 Q. Did Mr. Dondero ever expressly tell</p> <p>5 you to not have NexPoint make the required</p> <p>6 December 31, 2020, payment?</p> <p>7 A. Yes, I recall him saying don't make</p> <p>8 the payment because it was being negotiated, as</p> <p>9 I discussed with Mr. Morris, this offset</p> <p>10 concept. So there were obligations due by the</p> <p>11 advisors to Highland, they should be offset</p> <p>12 that -- you know, those obligations should be</p> <p>13 offset by this -- by this overpayment.</p> <p>14 Q. And when did he tell you that?</p> <p>15 A. I would say -- I would say around --</p> <p>16 probably December -- December-ish.</p> <p>17 Q. Early December, late December?</p> <p>18 A. I don't recall with as much</p> <p>19 specificity as -- as -- as -- as stopping the</p> <p>20 shared services payments, because we had</p> <p>21 actually made one shared services payment in</p> <p>22 November. So that is why I need to remember</p> <p>23 that one more clearly. I don't remember where</p> <p>24 exactly in December that conversation occurred.</p> <p>25 Q. Did Mr. Dondero expressly use the</p>	<p style="text-align: right;">Page 391</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 word "NexPoint" when he was saying don't make</p> <p>3 these payments?</p> <p>4 MR. MORRIS: Objection to the form</p> <p>5 of the question, asked and answered.</p> <p>6 A. Yeah, we were -- we were discussing</p> <p>7 advisor obligations. So it was -- you know, it</p> <p>8 was just obligations from the advisors.</p> <p>9 And -- and he specifically talked</p> <p>10 about the NexPoint payment as well.</p> <p>11 Q. Okay. And it is your testimony that</p> <p>12 he expressly told you not to make that NexPoint</p> <p>13 December 31 payment?</p> <p>14 MR. MORRIS: Objection, asked and</p> <p>15 answered twice.</p> <p>16 A. Yes, he -- he did, during that</p> <p>17 conversation.</p> <p>18 Q. And did you ever follow up with him</p> <p>19 after that about whether NexPoint should or</p> <p>20 shouldn't make that payment?</p> <p>21 A. I did not.</p> <p>22 Q. Did you ever, on or about</p> <p>23 December 31, 2020, remind him and say, hey,</p> <p>24 this payment is due, what shall I -- what</p> <p>25 should I do?</p>
<p style="text-align: right;">Page 392</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. I did not.</p> <p>3 Q. So sitting here today, you -- you</p> <p>4 remember distinctly that Dondero in December of</p> <p>5 2020 expressly told you not to have NexPoint</p> <p>6 make that payment?</p> <p>7 MR. MORRIS: Objection, asked and</p> <p>8 answered three times.</p> <p>9 A. Yes.</p> <p>10 Q. Can you say categorically it wasn't</p> <p>11 just some general discussion where he told you</p> <p>12 not to make payments?</p> <p>13 MR. MORRIS: Objection, asked and</p> <p>14 answer four times.</p> <p>15 MR. HORN: Four times now. Go for</p> <p>16 five.</p> <p>17 A. Yes.</p> <p>18 Q. Did you tell Mr. Seery that?</p> <p>19 A. I don't believe I did. I don't</p> <p>20 recall.</p> <p>21 Q. And was this an in-person discussion</p> <p>22 or telephone or email? Do you remember?</p> <p>23 A. This was a phone -- a phone</p> <p>24 conversation.</p> <p>25 Q. Okay. Would you have a record of --</p>	<p style="text-align: right;">Page 393</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 on your cell phone of when that conversation</p> <p>3 might have taken place?</p> <p>4 I'm sorry, strike that.</p> <p>5 Was that by cell phone?</p> <p>6 A. I believe -- yes, because we -- I</p> <p>7 was at home. I mean, I don't have a landline.</p> <p>8 All I have is my cell phone.</p> <p>9 Q. Do you know whether your cell phone</p> <p>10 still has records of conversations from</p> <p>11 December 2020 on it?</p> <p>12 A. My call log doesn't go back that</p> <p>13 far.</p> <p>14 Q. Okay. Thank you.</p> <p>15 MR. RUKAVINA: I will pass the</p> <p>16 witness.</p> <p>17 MS. DEITSCH-PEREZ: Just a couple</p> <p>18 quick questions.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MS. DEITSCH-PEREZ:</p> <p>21 Q. With respect to HCRE and HCMS, am I</p> <p>22 correct there was -- there was no direction not</p> <p>23 to pay those loan payments?</p> <p>24 MR. MORRIS: Objection to the form</p> <p>25 of the question.</p>

<p style="text-align: right;">Page 394</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 A. Yes, I don't recall having</p> <p>3 conversations about, you know, those -- those</p> <p>4 entities.</p> <p>5 Q. And, in fact, what was the tone that</p> <p>6 Mr. Dondero had when he talked to you about the</p> <p>7 fact that HCRE and HCMS payments hadn't been</p> <p>8 made when he found out that they hadn't been</p> <p>9 paid?</p> <p>10 MS. DANDENEAU: Objection to form.</p> <p>11 MR. MORRIS: Objection to form.</p> <p>12 Q. What was the tone he took with you?</p> <p>13 A. Oh, it was -- it was -- it was -- it</p> <p>14 was very negative. I mean, I think he cursed</p> <p>15 at me and he doesn't usually curse.</p> <p>16 Q. Okay. And in your mind, is that</p> <p>17 consistent with the fact that he was surprised</p> <p>18 that those payments hadn't been made?</p> <p>19 MR. MORRIS: Objection to the form</p> <p>20 of the question.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Thank you.</p> <p>23 MR. MORRIS: I have nothing further.</p> <p>24 Thank you so much, Mr. Waterhouse.</p> <p>25 MR. HORN: I have no questions.</p>	<p style="text-align: right;">Page 395</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 Thank you, Mr. Waterhouse. We appreciate</p> <p>3 your time. I am logging off the discussion</p> <p>4 and I will talk to y'all tomorrow.</p> <p>5 MR. MORRIS: Super.</p> <p>6 VIDEOGRAPHER: If there are no</p> <p>7 further questions, this ends the</p> <p>8 deposition -- excuse me. This ends the</p> <p>9 deposition, and we are going off the record</p> <p>10 at 7:30 p.m.</p> <p>11 (Deposition concluded at 7:30 p.m.)</p> <p>12</p> <p>13 _____</p> <p>14 FRANK WATERHOUSE</p> <p>15</p> <p>16 Subscribed and sworn to before me</p> <p>17 this day of 2021.</p> <p>18</p> <p>19 _____</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 396</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 I, SUSAN S. KLINGER, a certified shorthand</p> <p>5 reporter within and for the State of Texas, do</p> <p>6 hereby certify:</p> <p>7 That FRANK WATERHOUSE, the witness whose</p> <p>8 deposition is hereinbefore set forth, was duly</p> <p>9 sworn by me and that such deposition is a true</p> <p>10 record of the testimony given by such witness.</p> <p>11 I further certify that I am not related to</p> <p>12 any of the parties to this action by blood or</p> <p>13 marriage; and that I am in no way interested in</p> <p>14 the outcome of this matter.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my</p> <p>16 hand this 19th of October, 2021.</p> <p>17</p> <p>18 _____</p> <p>19 Susan S. Klinger, RMR-CRR, CSR</p> <p>20 Texas CSR# 6531</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 397</p> <p>1 WATERHOUSE - 10-19-21</p> <p>2 NAME OF CASE: In re: Highland Capital</p> <p>3 DATE OF DEPOSITION: October 19, 2021</p> <p>4 NAME OF WITNESS: Frank Waterhouse</p> <p>5 Reason Codes:</p> <p>6 1. To clarify the record.</p> <p>7 2. To conform to the facts.</p> <p>8 3. To correct transcription errors.</p> <p>9 Page____Line____Reason_____</p> <p>10 From_____to_____</p> <p>11 Page____Line____Reason_____</p> <p>12 From_____to_____</p> <p>13 Page____Line____Reason_____</p> <p>14 From_____to_____</p> <p>15 Page____Line____Reason_____</p> <p>16 From_____to_____</p> <p>17 Page____Line____Reason_____</p> <p>18 From_____to_____</p> <p>19 Page____Line____Reason_____</p> <p>20 From_____to_____</p> <p>21 Page____Line____Reason_____</p> <p>22 From_____to_____</p> <p>23 Page____Line____Reason_____</p> <p>24 From_____to_____</p> <p>25</p>

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## **EXHIBIT 4**

1 DONDERO - 10/29/21  
2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 -----  
6 IN RE:

7 Chapter 11  
8 HIGHLAND CAPITAL  
9 MANAGEMENT, L.P., CASE NO.  
10 19-34054-SGI11

11 Debtor.

12 -----  
13 HIGHLAND CAPITAL MANAGEMENT, L.P.,

14 Plaintiff,

15 vs. Adversary  
16 Proceeding No.

17 JAMES D. DONDERO, 21-03003-sgi

18 Defendant.  
19 -----  
20

21 REMOTE VIDEOTAPED DEPOSITION OF

22 JAMES DONDERO - VOLUME 2

23 October 29, 2021

24

25

24 Reported by: Susan S. Klinger, RMR-CRR, CSR

25 Job No. 201874



<p style="text-align: right;">Page 284</p> <p>1 DONDERO - 10/29/21</p> <p>2</p> <p>3</p> <p>4 October 29, 2021</p> <p>5 10:21 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Remote Deposition of JAMES DONDERO, held</p> <p>10 before Susan S. Klinger, a Registered Merit</p> <p>11 Reporter and Certified Realtime Reporter of the</p> <p>12 State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 285</p> <p>1 DONDERO - 10/29/21</p> <p>2 A P P E A R A N C E S:</p> <p>3 (All appearances via Zoom.)</p> <p>4 Attorneys for the Reorganized Highland Capital</p> <p>5 Management:</p> <p>6 John Morris, Esq.</p> <p>7 Hayley Winograd, Esq.</p> <p>8 Gregory Demo, Esq.</p> <p>9 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>10 780 Third Avenue</p> <p>11 New York, New York 10017</p> <p>12</p> <p>13 Attorneys for NexPoint Advisors, LP and</p> <p>14 Highland Capital Management Fund Advisors,</p> <p>15 L.P.:</p> <p>16 Davor Rukavina, Esq.</p> <p>17 Thomas Berghman, Esq.</p> <p>18 MUNSCH HARDT KOPF &amp; HARR</p> <p>19 500 North Akard Street</p> <p>20 Dallas, Texas 75201</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 286</p> <p>1 DONDERO - 10/29/21</p> <p>2 Attorneys for Jim Dondero, Nancy Dondero, HCRA,</p> <p>3 and HCMS:</p> <p>4 Deborah Deitsch-Perez, Esq.</p> <p>5 Michael Aigen, Esq.</p> <p>6 STINSON</p> <p>7 3102 Oak Lawn Avenue</p> <p>8 Dallas, Texas 75219</p> <p>9</p> <p>10 Attorneys for Dugaboy Investment Trust:</p> <p>11 Douglas Draper, Esq.</p> <p>12 Michael Landis, Esq.</p> <p>13 HELLER, DRAPER &amp; HORN</p> <p>14 650 Poydras Street</p> <p>15 New Orleans, Louisiana 70130</p> <p>16 Attorneys for Marc Kirschner as the trustee for</p> <p>17 the litigation SunTrust:</p> <p>18 Deborah Newman, Esq.</p> <p>19 QUINN EMANUEL URQUHART &amp; SULLIVAN</p> <p>20 51 Madison Avenue</p> <p>21 New York, New York 10010</p> <p>22 Also Present:</p> <p>23 Dan Elms</p> <p>24 Aaron Lawrence</p> <p>25 Patricia Jeffries, Pachulski Stang</p>	<p style="text-align: right;">Page 287</p> <p>1 DONDERO - 10/29/21</p> <p>2 I N D E X</p> <p>3 WITNESS PAGE</p> <p>4 JAMES DONDERO</p> <p>5 EXAMINATION BY MR. MORRIS 289</p> <p>6 E X H I B I T S</p> <p>7 No. Page</p> <p>8 Exhibit 1 Original Complaint 466</p> <p>9 Exhibit 2 NexPoint Complaint 408</p> <p>10 Exhibit 3 HCMS Complaint 433</p> <p>11 Exhibit 4 Letter, 12/3/20 464</p> <p>12 Exhibit 6 Term note 446</p> <p>13 Exhibit 15 NexPoint Advisors Answer 380</p> <p>14 Exhibit 16 HCMS's Answer 362</p> <p>15 Exhibit 17 HCRE's Answer 377</p> <p>16 Exhibit 31 Answer to Complaint 354</p> <p>17 Exhibit 35 Incumbency Certificate 309</p> <p>18 Exhibit 37 Incumbency Certificate 323</p> <p>19 Exhibit 47 NexPoint 30(b)(6) notice 345</p> <p>20 Exhibit 48 HCMS 30(b)(6) notice 353</p> <p>21 Exhibit 49 HCRE 30(b)(6) notice 354</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 288</p> <p>1 DONDERO - 10/29/21</p> <p>2 PROCEEDINGS</p> <p>3 VIDEOGRAPHER: This marks the</p> <p>4 beginning of Video 1 in Volume 2 of the</p> <p>5 deposition of James Dondero in the matter</p> <p>6 In Re: Highland Capital Management, L.P.</p> <p>7 Today's date is October 29, 2021. The time</p> <p>8 on the video monitor is 10:21 a.m.</p> <p>9 Will the court reporter please swear</p> <p>10 in the witness.</p> <p>11 JAMES DONDERO,</p> <p>12 having been first duly sworn, testified as</p> <p>13 follows:</p> <p>14 MR. MORRIS: Deborah, would you like</p> <p>15 to make a statement?</p> <p>16 MS. DEITSCH-PEREZ: I didn't know if</p> <p>17 you wanted appearances first. Sure. This</p> <p>18 is Deborah Deitsch-Perez from Stinson. I'm</p> <p>19 counsel for Mr. Dondero, Nancy Dondero,</p> <p>20 HCRE and HCMS in this deposition.</p> <p>21 I want to apologize for everybody</p> <p>22 that we're starting late. Mr. Dondero was</p> <p>23 under the weather. It is -- he has taken</p> <p>24 something, so he should not have to leave</p> <p>25 the deposition, but if at any point he</p>	<p style="text-align: right;">Page 289</p> <p>1 DONDERO - 10/29/21</p> <p>2 looks green to me, I will ask that we stop</p> <p>3 and reconvene when he is not feeling</p> <p>4 nauseous.</p> <p>5 MR. MORRIS: All right. I would</p> <p>6 like to just begin here. We have counsel</p> <p>7 on the line for all of the defendants, we</p> <p>8 have counsel for the plaintiff, and we have</p> <p>9 counsel for the Highland Litigation Trust,</p> <p>10 and I think that that is everybody who</p> <p>11 is -- is supposed to be here, so I would</p> <p>12 like to just begin.</p> <p>13 EXAMINATION</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Mr. Dondero, can you hear me okay?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And are you feeling well</p> <p>18 enough to begin today's deposition?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. I understand that you are not</p> <p>21 feeling well. And I want you to know that I do</p> <p>22 not want to proceed with this deposition unless</p> <p>23 you believe that you are physically and</p> <p>24 mentally able to participate to the best of</p> <p>25 your ability. Okay? Do you understand that?</p>
<p style="text-align: right;">Page 290</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. So if at any time you don't feel</p> <p>4 like you can continue, I would rather adjourn</p> <p>5 to one day next week to complete the deposition</p> <p>6 rather than forcing you to do something that</p> <p>7 you don't believe you're capable of doing.</p> <p>8 Okay?</p> <p>9 A. Yes. Yes. I did throw up twice</p> <p>10 last night.</p> <p>11 Q. Okay.</p> <p>12 A. I imagine we could go for -- let's</p> <p>13 shoot for four hours today, you know, maybe --</p> <p>14 maybe five, I don't know, but if we don't</p> <p>15 finish --</p> <p>16 Q. I don't want to --</p> <p>17 A. -- we will do the rest next week.</p> <p>18 Q. Okay. I don't want to put an</p> <p>19 arbitrary time on it. You tell me if you are</p> <p>20 unable to continue. Okay? Is that fair?</p> <p>21 A. Yes. That is my estimate at this</p> <p>22 point.</p> <p>23 Q. Okay. You founded Highland Capital</p> <p>24 Management, L.P.; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 291</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And we are going to refer to that</p> <p>3 entity and that entity only today as Highland;</p> <p>4 is that okay?</p> <p>5 A. Yes.</p> <p>6 Q. When did you found -- when did you</p> <p>7 create Highland?</p> <p>8 A. '94.</p> <p>9 Q. And did you serve as Highland's</p> <p>10 president from 1994 until on or around January</p> <p>11 9th, 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Did -- can you describe in your own</p> <p>14 words what the business of Highland was while</p> <p>15 you were president?</p> <p>16 A. We were largely below investment</p> <p>17 grade, credit strap, and we diversified over</p> <p>18 the years to become more of an alternative</p> <p>19 asset manager in a variety of formats.</p> <p>20 Q. And --</p> <p>21 MS. DEITSCH-PEREZ: I'm sorry, John,</p> <p>22 one sec. This was set up by someone a lot</p> <p>23 shorter than Mr. Dondero. Let me just take</p> <p>24 one minute to adjust it.</p> <p>25 MR. MORRIS: May I proceed, Deborah?</p>

<p style="text-align: right;">Page 292</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: (Nods head.)</p> <p>3 Q. Okay. Mr. Dondero, at its peak,</p> <p>4 what is the -- the largest value of assets that</p> <p>5 Highland had under management while you were</p> <p>6 president?</p> <p>7 A. 35 billion.</p> <p>8 Q. And do you recall what year that</p> <p>9 was?</p> <p>10 A. Not exactly.</p> <p>11 Q. Was it before the 2008 financial</p> <p>12 crisis?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So you were the president of</p> <p>15 Highland for about 25 years; is that right?</p> <p>16 A. Yes, 25, 26, whatever.</p> <p>17 Q. And do you consider yourself to be</p> <p>18 expert in the area of money management?</p> <p>19 A. Yeah, on the things that we focus</p> <p>20 on.</p> <p>21 Q. You are a sophisticated investor;</p> <p>22 right?</p> <p>23 A. Yes. I would believe I'm</p> <p>24 categorized as such.</p> <p>25 Q. And you are a sophisticated money</p>	<p style="text-align: right;">Page 293</p> <p>1 DONDERO - 10/29/21</p> <p>2 manager; is that fair?</p> <p>3 A. Yes.</p> <p>4 Q. And you manage money on behalf of</p> <p>5 thousands of people; isn't that right?</p> <p>6 A. Yes.</p> <p>7 Q. And as a general matter, you know</p> <p>8 how to read and understand balance sheets,</p> <p>9 don't you?</p> <p>10 A. Yes.</p> <p>11 Q. You have signed promissory --</p> <p>12 promissory notes before, haven't you?</p> <p>13 A. Yes.</p> <p>14 Q. Is it fair to say you have signed</p> <p>15 hundreds of promissory notes during the 25-year</p> <p>16 period that you were the president of Highland?</p> <p>17 A. No.</p> <p>18 Q. Is it fair to say that you signed</p> <p>19 dozens of promissory notes during the time that</p> <p>20 you were president of Highland?</p> <p>21 A. Yeah, dozens is probably fair.</p> <p>22 Q. Okay. And is it fair to say that</p> <p>23 the aggregate principal amount of the</p> <p>24 promissory notes that you signed while you were</p> <p>25 president of Highland likely exceeded</p>
<p style="text-align: right;">Page 294</p> <p>1 DONDERO - 10/29/21</p> <p>2 \$200 million?</p> <p>3 MS. DEITSCH-PEREZ: Objection to the</p> <p>4 form.</p> <p>5 A. I don't have a basis for knowing</p> <p>6 that.</p> <p>7 Q. You do know that it is more than</p> <p>8 \$100 million, don't you?</p> <p>9 A. No.</p> <p>10 Q. Do you owe today Highland Capital</p> <p>11 Management Services more than \$75 million?</p> <p>12 A. I don't know what the amount is. I</p> <p>13 don't believe it is that much.</p> <p>14 Q. Are the obligations to Highland</p> <p>15 Capital --</p> <p>16 MS. DEITSCH-PEREZ: Hold on. Hold</p> <p>17 on. My connection just disappeared.</p> <p>18 MR. MORRIS: Okay.</p> <p>19 MS. DEITSCH-PEREZ: Okay, I'm back.</p> <p>20 Q. Okay. Did the -- did the</p> <p>21 obligations that you have to Highland Capital</p> <p>22 Management Services, are they reflected in</p> <p>23 promissory notes?</p> <p>24 MS. DEITSCH-PEREZ: Could you repeat</p> <p>25 that question?</p>	<p style="text-align: right;">Page 295</p> <p>1 DONDERO - 10/29/21</p> <p>2 MR. MORRIS: Sure.</p> <p>3 Q. Mr. Dondero, you borrowed money from</p> <p>4 Highland Capital Management Services; correct?</p> <p>5 A. I'm sorry, it sounds like at first</p> <p>6 you were asking me, did Highland Capital</p> <p>7 Services borrow money from Highland. Now</p> <p>8 you're asking me if I borrowed money from</p> <p>9 Services?</p> <p>10 Q. Yeah, let me -- let me rephrase the</p> <p>11 question, sir, because if it is not clear, that</p> <p>12 is my fault, and I apologize.</p> <p>13 Did you -- have you borrowed money</p> <p>14 from Highland Capital Management Services?</p> <p>15 A. I believe so.</p> <p>16 Q. Okay. Do you know the aggregate</p> <p>17 principal amount that is outstanding today,</p> <p>18 ballpark?</p> <p>19 A. No.</p> <p>20 Q. Are the obligations that you have to</p> <p>21 Highland Capital Management Services reflected</p> <p>22 in promissory notes where you're the maker and</p> <p>23 Highland Capital Management Services is the</p> <p>24 payee?</p> <p>25 A. Please repeat that question.</p>

<p style="text-align: right;">Page 296</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Are you the maker on promissory</p> <p>3 notes in favor of Highland Capital Management</p> <p>4 Services, Inc.?</p> <p>5 A. I don't know. I believe -- I</p> <p>6 believe so, or I believe I have in the past,</p> <p>7 but I don't know.</p> <p>8 Q. Do you have any -- any estimate as</p> <p>9 to how much money you owe Highland Capital</p> <p>10 Management Services, Inc. today?</p> <p>11 MS. DEITSCH-PEREZ: Asked and</p> <p>12 answered.</p> <p>13 A. No.</p> <p>14 Q. Can you say if it is more or less</p> <p>15 than \$50 million?</p> <p>16 A. I don't know.</p> <p>17 Q. Can you say if it is more or less</p> <p>18 than \$25 million?</p> <p>19 A. I don't know.</p> <p>20 Q. As a general matter, is it fair to</p> <p>21 say that you know how to read and understand</p> <p>22 promissory notes?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. In general, yes.</p>	<p style="text-align: right;">Page 297</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. When you were in control of</p> <p>3 Highland, you personally decided who was hired</p> <p>4 at that company; is that fair?</p> <p>5 A. Sometimes, in senior positions.</p> <p>6 Q. Okay. Did your duties as president</p> <p>7 of Highland include being familiar with the</p> <p>8 debts and obligations that were owed to</p> <p>9 Highland?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I mean, generally.</p> <p>13 Q. Okay. Did you ever do anything to</p> <p>14 familiarize yourself with the debts and</p> <p>15 obligations that were owed to Highland?</p> <p>16 A. Are you referring to the affiliated</p> <p>17 notes or --</p> <p>18 Q. Sure.</p> <p>19 A. -- or what -- what are --</p> <p>20 Q. I was -- I was asking -- I</p> <p>21 apologize. I don't mean to step on your words.</p> <p>22 A. No, you just -- because I don't</p> <p>23 think Highland had a lot of other obligations</p> <p>24 due from other parties, and the affiliated</p> <p>25 notes in aggregate were always de minimis to</p>
<p style="text-align: right;">Page 298</p> <p>1 DONDERO - 10/29/21</p> <p>2 Highland than now, at any time.</p> <p>3 Q. It is your -- it is your position</p> <p>4 that the affiliate notes to Highland were de</p> <p>5 minimis in amount?</p> <p>6 A. Yes.</p> <p>7 Q. And how do you define de minimus for</p> <p>8 that purpose?</p> <p>9 A. I believe the balance sheet of</p> <p>10 Highland today for the last three years, four</p> <p>11 years, five years has been between 5 and</p> <p>12 \$600 million. I believe the notes have never</p> <p>13 been more than 8 or 10 or 12 percent of that</p> <p>14 number.</p> <p>15 Q. And you believe that 8 or 10 or</p> <p>16 12 percent of Highland's asset base you</p> <p>17 would -- you would define as de minimis?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. As -- as president of</p> <p>20 Highland, did you ever do anything to</p> <p>21 familiarize yourself with the number and amount</p> <p>22 of affiliate loans that Highland carried on its</p> <p>23 books and records?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Was there anybody at Highland who</p>	<p style="text-align: right;">Page 299</p> <p>1 DONDERO - 10/29/21</p> <p>2 was charged with the responsibility of knowing</p> <p>3 the number and amount of affiliate loans that</p> <p>4 Highland carried on its balance sheet?</p> <p>5 A. Sure.</p> <p>6 Q. Can you identify the people who were</p> <p>7 responsible for that?</p> <p>8 A. The people in accounting responsible</p> <p>9 for tracking assets and liabilities in</p> <p>10 preparing all the audited financial statements</p> <p>11 every year and the quarterly unaudited</p> <p>12 financial statements that were prepared and the</p> <p>13 monthly operating reports.</p> <p>14 Q. Can you -- can you name any names of</p> <p>15 the people who had the responsibilities that</p> <p>16 you just described?</p> <p>17 A. I think it changed regularly, but it</p> <p>18 would have been people in Frank's group in</p> <p>19 accounting.</p> <p>20 Q. Did Frank have any responsibility</p> <p>21 for knowing and understanding the affiliate</p> <p>22 loans that Highland carried on its balance</p> <p>23 sheet?</p> <p>24 A. Sure. I -- as CFO he had to sign</p> <p>25 off on the audited financials and rep letters</p>

<p style="text-align: right;">Page 300</p> <p>1 DONDERO - 10/29/21</p> <p>2 and -- yes.</p> <p>3 Q. And can you -- can you identify the</p> <p>4 name of any person in the accounting group in,</p> <p>5 let's say, the three years prior to the</p> <p>6 bankruptcy who had responsibility for knowing</p> <p>7 and understanding the scope of affiliate loans</p> <p>8 that Highland carried on its balance sheet?</p> <p>9 A. No, I would just be speculating but</p> <p>10 it would be -- the senior people in Frank's</p> <p>11 group would be responsible for the financial</p> <p>12 statements.</p> <p>13 Q. Are you able to name the people, the</p> <p>14 senior people in Frank's group in the couple of</p> <p>15 years prior to the bankruptcy?</p> <p>16 A. Yes, but I don't know -- like</p> <p>17 David Klos was a senior person, Cliff Stoops</p> <p>18 was a senior person. There were a couple</p> <p>19 up-and-comers below them, but who did the</p> <p>20 financials -- how Frank assigned the work in</p> <p>21 his group, I have no idea.</p> <p>22 Q. Did you ever ask?</p> <p>23 A. No.</p> <p>24 Q. Do you have any knowledge as you sit</p> <p>25 here today who within Frank's group had</p>	<p style="text-align: right;">Page 301</p> <p>1 DONDERO - 10/29/21</p> <p>2 responsibility for knowing and understanding</p> <p>3 the affiliate loans that Highland carried on</p> <p>4 its balance sheets?</p> <p>5 A. No.</p> <p>6 Q. And to the best of your knowledge as</p> <p>7 you sit here today, you never personally did</p> <p>8 anything to know and understand the extent and</p> <p>9 scope of the affiliate loans that Highland</p> <p>10 carried on its balance sheet; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. You appointed Mr. Waterhouse</p> <p>13 as Highland's CFO; is that right?</p> <p>14 A. I think it was appointed and</p> <p>15 recommended by Patrick Boyce, but I agreed with</p> <p>16 the selection.</p> <p>17 Q. And you --</p> <p>18 A. That -- (speaking simultaneously.)</p> <p>19 Q. I apologize, are you done?</p> <p>20 A. I'm just saying that was a long time</p> <p>21 ago, but I don't remember the details exactly.</p> <p>22 Q. But you had the authority and you</p> <p>23 used that authority to appoint Frank as CFO;</p> <p>24 correct?</p> <p>25 MS. DEITSCH-PEREZ: There's a lag in</p>
<p style="text-align: right;">Page 302</p> <p>1 DONDERO - 10/29/21</p> <p>2 the video. I don't know if it matters, but</p> <p>3 for a while Jim was frozen. And I know</p> <p>4 because -- since there was voice and no --</p> <p>5 his mouth wasn't moving. So let's just --</p> <p>6 if the videographer sees there is a</p> <p>7 problem, please let us know.</p> <p>8 Q. I --</p> <p>9 A. Yes. I'm sorry, could you just</p> <p>10 repeat the question regarding Frank, please?</p> <p>11 Q. Sure.</p> <p>12 As the president of Highland, did</p> <p>13 you have the authority and did you exercise</p> <p>14 that authority to appoint him as Highland's</p> <p>15 CFO?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Do you recall when you</p> <p>18 appointed Mr. Waterhouse CFO of Highland?</p> <p>19 A. No.</p> <p>20 Q. Was it more than five years prior to</p> <p>21 the bankruptcy?</p> <p>22 A. Yes.</p> <p>23 Q. As the president -- during the time</p> <p>24 that you served as president of Highland, did</p> <p>25 you believe that Mr. Waterhouse fulfilled his</p>	<p style="text-align: right;">Page 303</p> <p>1 DONDERO - 10/29/21</p> <p>2 duties as chief financial officer?</p> <p>3 A. Yes.</p> <p>4 Q. Can you recall anything that</p> <p>5 Mr. Waterhouse did in his capacity as</p> <p>6 Highland's CFO that did not comport with your</p> <p>7 expectations?</p> <p>8 A. I think we will talk about some of</p> <p>9 those today.</p> <p>10 Q. Okay. Do you have any reason to</p> <p>11 believe that Mr. Waterhouse ever breached his</p> <p>12 duties to Highland during the time that you</p> <p>13 served as president?</p> <p>14 COURT REPORTER: We can't hear you</p> <p>15 speaking.</p> <p>16 Q. We haven't heard any portion of your</p> <p>17 answer, Mr. Dondero.</p> <p>18 MR. MORRIS: I don't know if people</p> <p>19 can -- can hear, but I cannot hear</p> <p>20 Mr. Dondero.</p> <p>21 COURT REPORTER: I can't either.</p> <p>22 MR. MORRIS: Yeah, Deborah, can you</p> <p>23 speak, please.</p> <p>24 COURT REPORTER: They're on the same</p> <p>25 speaker.</p>

<p style="text-align: right;">Page 304</p> <p>1 DONDERO - 10/29/21</p> <p>2 VIDEOGRAPHER: Do we want to go off</p> <p>3 the record?</p> <p>4 MR. MORRIS: Yes, please.</p> <p>5 VIDEOGRAPHER: Off the record,</p> <p>6 10:41.</p> <p>7 (Recess taken 10:41 a.m. to 10:47 a.m.)</p> <p>8 VIDEOGRAPHER: Back on the record,</p> <p>9 10:47.</p> <p>10 Q. Okay. Let me just ask the question</p> <p>11 again so the record is clean, Mr. Dondero.</p> <p>12 Do you have any reason to believe as</p> <p>13 you sit here right now that Mr. Waterhouse ever</p> <p>14 breached his duties to Highland during the time</p> <p>15 that you served as president?</p> <p>16 MS. DEITSCH-PEREZ: Asked and</p> <p>17 answered.</p> <p>18 A. Yeah, I think I did ask and answer</p> <p>19 that. Again, not intentionally, not</p> <p>20 maliciously. I am -- I guess things we're</p> <p>21 going to talk about today are for periods of</p> <p>22 time after I was president, so...</p> <p>23 Q. Right. That is going to be the next</p> <p>24 question that I ask. But to be clear -- I just</p> <p>25 want to have a clear record -- during the time</p>	<p style="text-align: right;">Page 305</p> <p>1 DONDERO - 10/29/21</p> <p>2 that you were president, do you have any reason</p> <p>3 to believe that Mr. Waterhouse breached his</p> <p>4 duties to Highland?</p> <p>5 MS. DEITSCH-PEREZ: Asked and</p> <p>6 answered. This is the third time.</p> <p>7 A. No.</p> <p>8 MR. MORRIS: It is actually not.</p> <p>9 Q. But thank you, Mr. Dondero. I</p> <p>10 appreciate that.</p> <p>11 After you ceased to be president of</p> <p>12 Highland, do you have any reason to believe</p> <p>13 that Mr. Waterhouse breached his duties to</p> <p>14 Highland?</p> <p>15 A. Breached his duties to -- I don't --</p> <p>16 I don't know if it is -- I don't want to -- I</p> <p>17 don't want to make a judgment overall. When we</p> <p>18 talk about the notes we can make conclusions</p> <p>19 then.</p> <p>20 Q. All right. But you're not able to</p> <p>21 tell me in response to my question whether you</p> <p>22 believe today that Mr. Waterhouse breached his</p> <p>23 duties to Highland after the time that you</p> <p>24 served as president?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 306</p> <p>1 DONDERO - 10/29/21</p> <p>2 form of the question.</p> <p>3 A. I don't want to comment off the top</p> <p>4 of my head, but I've highlighted that we will</p> <p>5 discuss it around the note issue.</p> <p>6 Q. Okay. You are familiar with an</p> <p>7 entity called Highland Capital Management Fund</p> <p>8 Advisors, L.P.; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And we're going to refer to that</p> <p>11 entity as HCMFA. Is that okay?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know who owns HCMFA?</p> <p>14 A. I believe it is myself and</p> <p>15 Mark Okada.</p> <p>16 Q. Okay. And do you have an</p> <p>17 understanding as to -- as to the percentage of</p> <p>18 each of your interests, ownership interests in</p> <p>19 HCMFA?</p> <p>20 A. No, and I don't know the entities.</p> <p>21 I don't know if I own it directly or through</p> <p>22 Dugaboy. And I do believe Okada tends to use</p> <p>23 his trusts, but I don't know the percentages</p> <p>24 either.</p> <p>25 Q. Do you own a -- do you own a</p>	<p style="text-align: right;">Page 307</p> <p>1 DONDERO - 10/29/21</p> <p>2 major- -- withdrawn.</p> <p>3 Do you directly or indirectly own a</p> <p>4 majority of the ownership interests in HCMFA?</p> <p>5 A. I believe so.</p> <p>6 Q. Okay. And do you control HCMFA?</p> <p>7 A. Yes.</p> <p>8 Q. And do you know when HCMFA was</p> <p>9 created?</p> <p>10 A. No, I do not.</p> <p>11 Q. Do you know if it was before or</p> <p>12 after 2010?</p> <p>13 A. I don't know.</p> <p>14 Q. Have you controlled HCMFA since the</p> <p>15 time it was created?</p> <p>16 A. I believe so, but I don't know for</p> <p>17 sure.</p> <p>18 Q. Can you think of any period of time</p> <p>19 when you didn't control HCMFA?</p> <p>20 A. I don't know. I don't remember the</p> <p>21 ownership structure prior and I don't remember</p> <p>22 when it started, so I don't know.</p> <p>23 Q. Okay. I'm asking about control and</p> <p>24 not ownership.</p> <p>25 Can you think of any period of time</p>



<p style="text-align: right;">Page 308</p> <p>1 DONDERO - 10/29/21</p> <p>2 when you did not control HCMFA?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay. Can you tell me what the</p> <p>5 nature of HCMFA's business is?</p> <p>6 A. It largely housed our mutual funds.</p> <p>7 Q. What does it mean to house mutual</p> <p>8 funds?</p> <p>9 A. It managed -- it managed the mutual</p> <p>10 funds from a portfolio asset side and captured</p> <p>11 the management fees as the advisor or sub</p> <p>12 advisor -- I can't remember the structure. I</p> <p>13 can't remember if it was the advisor and</p> <p>14 Highland was the sub advisor or vice versa, but</p> <p>15 in general, a good portion, or most of the</p> <p>16 portfolio team that managed the mutual funds</p> <p>17 was employed at HCMFA.</p> <p>18 Q. Do you have a title with HCMFA</p> <p>19 today?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you know who the president of</p> <p>22 HCMFA is?</p> <p>23 A. I would believe -- I would -- I</p> <p>24 would think I am, but I don't know.</p> <p>25 Q. Do you know of any title that you</p>	<p style="text-align: right;">Page 309</p> <p>1 DONDERO - 10/29/21</p> <p>2 have at HCMFA today?</p> <p>3 A. I know I'm the portfolio manager on</p> <p>4 a bunch of the funds, one of usually two or</p> <p>5 three portfolio managers, and I believe I'm the</p> <p>6 president, but I don't know beyond that.</p> <p>7 Q. Okay. Did Frank Waterhouse serve as</p> <p>8 treasurer of HCMFA at any point in time?</p> <p>9 A. I don't know. I don't know. I</p> <p>10 just -- I don't know. I don't remember.</p> <p>11 MR. MORRIS: Can I ask my -- my</p> <p>12 colleague to please put up a document that</p> <p>13 was premarked as Exhibit 35 to see if I can</p> <p>14 refresh your recollection.</p> <p>15 MS. DEITSCH-PEREZ: Is that in the</p> <p>16 book that you sent over?</p> <p>17 MR. MORRIS: No. She will post it</p> <p>18 and she will put it in the chat room.</p> <p>19 Q. Are you able to see that,</p> <p>20 Mr. Dondero?</p> <p>21 A. Yes.</p> <p>22 Q. Can you see that this is an</p> <p>23 incumbency certificate?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know what an incumbency</p>
<p style="text-align: right;">Page 310</p> <p>1 DONDERO - 10/29/21</p> <p>2 certificate is?</p> <p>3 A. I'm reading it here for a second. I</p> <p>4 guess it is an officer statement or signature</p> <p>5 authority, or some combination thereof.</p> <p>6 Q. Is that your signature at the bottom</p> <p>7 of this document?</p> <p>8 A. Yes.</p> <p>9 Q. And do you see that this is an</p> <p>10 incumbency certificate for HCMFA that you</p> <p>11 signed effective as of April 11th, 2019?</p> <p>12 A. Yes.</p> <p>13 Q. Do you see that Frank Waterhouse is</p> <p>14 identified as the treasurer of HCMFA as of that</p> <p>15 date?</p> <p>16 A. Yes.</p> <p>17 Q. Does that refresh your recollection</p> <p>18 that Mr. Waterhouse served as the treasurer of</p> <p>19 HCMFA?</p> <p>20 A. It seems to be an authoritative</p> <p>21 document, but I didn't have a recollection.</p> <p>22 Q. Do you know of anybody else who has</p> <p>23 ever served as the treasurer of HCMFA other</p> <p>24 than Mr. Waterhouse?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 311</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Did you, in your capacity as the</p> <p>3 person who was in control of HCMFA, appoint</p> <p>4 Mr. Waterhouse as the treasurer of that entity?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. It appears to me that that's what</p> <p>8 this incumbency certificate does, but...</p> <p>9 Q. Is it fair to say that you knew for</p> <p>10 at least a few years prior to the petition date</p> <p>11 that Mr. Waterhouse was simultaneously serving</p> <p>12 as Highland's CFO and HCMFA's treasurer?</p> <p>13 A. No. I mean, like I said, I don't</p> <p>14 remember, and a lot of the officers had</p> <p>15 multiple roles and multiple entities. I mean,</p> <p>16 it is not surprising, but I didn't have any</p> <p>17 recollection.</p> <p>18 Q. Are you aware that Mr. Waterhouse</p> <p>19 served in any capacity in the Highland universe</p> <p>20 of companies other than as CFO of Highland</p> <p>21 Capital Management, L.P.?</p> <p>22 A. I would -- I would assume he would</p> <p>23 have a position like this in multiple other</p> <p>24 entities, but I don't know which ones or what</p> <p>25 titles he would have off the top of my head.</p>

<p style="text-align: right;">Page 312</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Is it fair to say, though, that he</p> <p>3 wouldn't have obtained any of those titles</p> <p>4 without your knowledge and approval?</p> <p>5 A. It is -- it is fair to say he was --</p> <p>6 he had -- the lawyers or whoever worked on</p> <p>7 general corporate structuring, Frank was a</p> <p>8 senior officer in good standing, so they would</p> <p>9 have used him as appropriate in different</p> <p>10 things.</p> <p>11 So to that extent, I guess I approve</p> <p>12 it, but I sign hundreds of things like this.</p> <p>13 Would -- you know, would I have been</p> <p>14 specifically aware or remember -- remember it</p> <p>15 is a very low likelihood.</p> <p>16 Q. Is there any position that</p> <p>17 Mr. Waterhouse has ever held that you learned</p> <p>18 about and you objected to on the grounds that</p> <p>19 you hadn't approved it?</p> <p>20 A. No, not that I recall.</p> <p>21 Q. Okay. Do you know if Mr. Waterhouse</p> <p>22 held any positions with any of the retail</p> <p>23 funds?</p> <p>24 A. I don't know.</p> <p>25 Q. He may have, you just don't recall;</p>	<p style="text-align: right;">Page 313</p> <p>1 DONDERO - 10/29/21</p> <p>2 is that right?</p> <p>3 A. That is correct.</p> <p>4 Q. And you can't identify any title</p> <p>5 that Mr. Waterhouse held during the time that</p> <p>6 you served as Highland's president other than</p> <p>7 CFO of Highland. Do I have that right?</p> <p>8 A. No, I don't think that is fair.</p> <p>9 Q. Okay.</p> <p>10 A. I mean -- I mean, he was CFO, but he</p> <p>11 was other things before he was CFO. And as we</p> <p>12 were just saying, he's -- he's treasurer on</p> <p>13 this incumbency certificate, but I think he</p> <p>14 might have been on other incumbency</p> <p>15 certificates, so I think your -- your summary</p> <p>16 was too narrow.</p> <p>17 Q. Okay. Can you identify any position</p> <p>18 that Mr. Waterhouse held at the same time that</p> <p>19 he is CFO of Highland other than treasurer of</p> <p>20 HCMFA as reflected on this document?</p> <p>21 A. I can't recall, but I imagine there</p> <p>22 to be others.</p> <p>23 Q. And to the extent there are others,</p> <p>24 is it fair to say that you knew at the time</p> <p>25 that Mr. Waterhouse was serving in more than</p>
<p style="text-align: right;">Page 314</p> <p>1 DONDERO - 10/29/21</p> <p>2 one role?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And in his capacity as CFO of</p> <p>5 Highland, did he report directly to you?</p> <p>6 A. Yes.</p> <p>7 Q. In his capacity as treasurer of</p> <p>8 HCMFA, did he report directly to you?</p> <p>9 A. Yeah, it appears that, yes, that is</p> <p>10 how it was structured.</p> <p>11 Q. Can you think of any position that</p> <p>12 Mr. Waterhouse ever held in the Highland family</p> <p>13 of companies where he didn't report directly to</p> <p>14 you?</p> <p>15 A. I can't -- I can't think of any.</p> <p>16 Q. Is Mr. Waterhouse the treasurer of</p> <p>17 HCMFA today?</p> <p>18 A. I don't know. I'm not aware of any</p> <p>19 changes, nor did I orchestrate any changes, but</p> <p>20 I don't know for sure.</p> <p>21 Q. Can you identify any position that</p> <p>22 Mr. Waterhouse holds with any former affiliated</p> <p>23 company of Highland today?</p> <p>24 A. Again, I'm not aware of any changes,</p> <p>25 nor did I orchestrate or precipitate any</p>	<p style="text-align: right;">Page 315</p> <p>1 DONDERO - 10/29/21</p> <p>2 changes. With the formation of Skyview, I</p> <p>3 don't know if there was changes. I'm not</p> <p>4 aware.</p> <p>5 Q. Have you considered firing</p> <p>6 Mr. Waterhouse from any of the positions that</p> <p>7 he holds with any of the companies that were</p> <p>8 formerly affiliated with Highland?</p> <p>9 A. No.</p> <p>10 Q. As the president of HCMFA --</p> <p>11 withdrawn.</p> <p>12 As the person who was in control of</p> <p>13 HCMFA, did you have any responsibility for</p> <p>14 being familiar with HCMFA's debts and</p> <p>15 obligations?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. I don't know.</p> <p>19 Q. Did you ever do anything in your</p> <p>20 capacity as the person in control of HCMFA to</p> <p>21 familiarize yourself with HCMFA's debts and</p> <p>22 obligations?</p> <p>23 A. Not during -- I mean, not prior to</p> <p>24 bankruptcy.</p> <p>25 Q. So before the bankruptcy, you didn't</p>

<p style="text-align: right;">Page 316</p> <p>1 DONDERO - 10/29/21</p> <p>2 take any steps to familiarize yourself with</p> <p>3 HCMFA's debts and obligations. Do I have that</p> <p>4 right?</p> <p>5 A. Correct, not specifically.</p> <p>6 Q. Okay. Who was responsible for</p> <p>7 knowing and understanding the scope and extent</p> <p>8 of HCMFA's debts and obligations?</p> <p>9 A. That would have fallen on Frank and</p> <p>10 his group.</p> <p>11 Q. Okay. Do you have an understanding</p> <p>12 as to who was authorized to incur obligations</p> <p>13 on behalf of HCMFA?</p> <p>14 A. I mean, beyond -- beyond due course,</p> <p>15 I struggle to see why it would be anybody other</p> <p>16 than me, but I don't know.</p> <p>17 Q. Do you know if Mr. Waterhouse was</p> <p>18 authorized as the treasurer of HCMFA to incur</p> <p>19 obligations on its behalf?</p> <p>20 A. He wasn't the senior operating or</p> <p>21 executive positions there. So the answer is</p> <p>22 no, beyond, you know -- beyond the normal</p> <p>23 course of operating expenses or whatever, but</p> <p>24 it would -- he would never be the person on</p> <p>25 anything of significance.</p>	<p style="text-align: right;">Page 317</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. How do you define "significance"?</p> <p>3 A. Like waiving fees on a mutual fund,</p> <p>4 purchasing another mutual fund, yeah, things</p> <p>5 like that.</p> <p>6 Q. Was there any document or policy</p> <p>7 that you are aware of that specifically</p> <p>8 identifies the scope of Mr. Waterhouse's</p> <p>9 authority as the treasurer of HCMFA?</p> <p>10 A. No.</p> <p>11 Q. Is there anything that you are aware</p> <p>12 of that specifically limits Mr. Waterhouse's</p> <p>13 authority other than what might be in your</p> <p>14 head?</p> <p>15 A. No, I would -- I would say what is</p> <p>16 in my head is -- would be typical industry</p> <p>17 practice. You wouldn't -- you wouldn't have</p> <p>18 executive vice presidents or ownership defined</p> <p>19 if you were going to delegate everything to an</p> <p>20 employee three levels down, you know.</p> <p>21 MS. DEITSCH-PEREZ: Okay. John,</p> <p>22 I've had a request from Davor to take a</p> <p>23 quick restroom break, so --</p> <p>24 MR. MORRIS: You know, I really --</p> <p>25 Davor, I'm happy to accommodate, but at</p>
<p style="text-align: right;">Page 318</p> <p>1 DONDERO - 10/29/21</p> <p>2 some point we have got to be able to get</p> <p>3 more than 10 minutes of testimony in a row.</p> <p>4 So let's take a short break.</p> <p>5 MS. DEITSCH-PEREZ: Thank you.</p> <p>6 VIDEOGRAPHER: Going off the record.</p> <p>7 The time is 11:08.</p> <p>8 (Recess taken 11:08 a.m. to 11:16 a.m.)</p> <p>9 VIDEOGRAPHER: Back on the record,</p> <p>10 11:16.</p> <p>11 Q. Mr. Dondero, did you communicate</p> <p>12 with anybody on the break about the substance</p> <p>13 of your testimony?</p> <p>14 A. No.</p> <p>15 Q. As treasurer of HCMFA, did</p> <p>16 Mr. Waterhouse's responsibilities include being</p> <p>17 familiar with HCMFA's debts and obligations?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have any reason to believe as</p> <p>20 you sit here today that Mr. Waterhouse failed</p> <p>21 to fulfill his responsibilities as treasurer of</p> <p>22 HCMFA and familiarize himself with their debts</p> <p>23 and responsibilities?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p style="text-align: right;">Page 319</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I don't know.</p> <p>3 Q. I appreciate that you don't know,</p> <p>4 but do you have any reason as you sit here</p> <p>5 today to believe that he failed to fulfill that</p> <p>6 particular responsibility?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. Are you an authorized</p> <p>9 signatory on HCMFA's bank accounts?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know who the authorized</p> <p>12 signatories are on HCMFA's bank accounts?</p> <p>13 A. No.</p> <p>14 Q. Do you know whether anybody now</p> <p>15 employed or previously employed by Highland was</p> <p>16 an authorized signatory with respect to any of</p> <p>17 HCMFA's bank accounts?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know whether Mr. Waterhouse</p> <p>20 was an authorized signatory on any of HCMFA's</p> <p>21 bank accounts?</p> <p>22 A. I don't know how he had -- had it</p> <p>23 set up. There would have been, I imagine,</p> <p>24 checks and balances. We run, as far as I know,</p> <p>25 a compliant accounting group, you know, with</p>

<p style="text-align: right;">Page 320</p> <p>1 DONDERO - 10/29/21</p> <p>2 the right audit controls, et cetera. So I</p> <p>3 would imagine there would have been somebody</p> <p>4 preparing it and multiple signatures or</p> <p>5 multiple sign-offs on wires, but I have no</p> <p>6 awareness of this. I mean, I would believe</p> <p>7 that it was done compliantly and correctly, but</p> <p>8 I don't have any specific awareness.</p> <p>9 Q. Okay. Do you know Lauren Thedford?</p> <p>10 A. Yes.</p> <p>11 Q. And was Ms. Thedford an employee of</p> <p>12 Highland at one time?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall what position she held</p> <p>15 at any particular point in time?</p> <p>16 A. I believe she held several different</p> <p>17 positions over the years, but I remember most</p> <p>18 as a corporate attorney working on document --</p> <p>19 documents when we -- we do new funds or amend</p> <p>20 old funds.</p> <p>21 Q. Okay. Do you recall whether she</p> <p>22 served as an officer of HCMFA?</p> <p>23 A. Wasn't her name on the incumbency</p> <p>24 certificate we had up earlier?</p> <p>25 Q. It was. We can put it back up if</p>	<p style="text-align: right;">Page 321</p> <p>1 DONDERO - 10/29/21</p> <p>2 you want to look at that.</p> <p>3 A. No, but I think that is -- that is</p> <p>4 the answer, but that is my only awareness.</p> <p>5 Q. Okay. Do you have -- do you have --</p> <p>6 do you know whether she was ever appointed to</p> <p>7 any position within the Highland corporate</p> <p>8 family other than as an attorney with Highland</p> <p>9 and as the secretary of HCMFA?</p> <p>10 A. I don't know.</p> <p>11 Q. Other than Ms. Waterhouse --</p> <p>12 withdrawn.</p> <p>13 Other than Mr. Waterhouse and</p> <p>14 Ms. Thedford, can you identify any current or</p> <p>15 former employee of Highland that ever served as</p> <p>16 an officer of HCMFA?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. Can you identify any current</p> <p>19 or former employee of Highland who was</p> <p>20 simultaneously also an employee of HCMFA?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. You mean somebody who was a dual</p> <p>24 employee?</p> <p>25 Q. Yeah, who was actually -- yeah, to</p>
<p style="text-align: right;">Page 322</p> <p>1 DONDERO - 10/29/21</p> <p>2 be clear, who was actually employed by both,</p> <p>3 who received, you know, income from both.</p> <p>4 A. I don't know regarding income, but</p> <p>5 some of that historic portfolio managers like</p> <p>6 Michael Gregory or Jonathan Lamensdorf, they</p> <p>7 did work for HCMFA primarily, but they also did</p> <p>8 other things for Highland. I don't know how</p> <p>9 their compensation or their bonuses were split.</p> <p>10 I just -- I wouldn't have awareness of that.</p> <p>11 Q. Let's move on to NexPoint. You're</p> <p>12 familiar with an entity called NexPoint</p> <p>13 Advisors, L.P.; correct?</p> <p>14 A. Yes.</p> <p>15 Q. We will refer to that as NexPoint,</p> <p>16 okay?</p> <p>17 A. Sure.</p> <p>18 Q. Do you know who owns NexPoint?</p> <p>19 A. Directly or indirectly, I believe I</p> <p>20 do.</p> <p>21 Q. Okay. And do you control NexPoint?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know when NexPoint was</p> <p>24 created?</p> <p>25 A. More than five years ago, but I</p>	<p style="text-align: right;">Page 323</p> <p>1 DONDERO - 10/29/21</p> <p>2 don't remember when.</p> <p>3 Q. Can you tell me generally the nature</p> <p>4 of NexPoint's business?</p> <p>5 A. It is generally real estate related.</p> <p>6 Q. Have you controlled NexPoint</p> <p>7 throughout its corporate existence, to the best</p> <p>8 of your knowledge?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have a title with NexPoint</p> <p>11 today?</p> <p>12 A. I believe I'm president, but I don't</p> <p>13 know for sure.</p> <p>14 Q. Did you appoint Mr. Waterhouse to</p> <p>15 serve as treasurer of NexPoint?</p> <p>16 A. I don't know.</p> <p>17 MR. MORRIS: Please put up Exhibit</p> <p>18 37.</p> <p>19 Q. This is another incumbency</p> <p>20 certificate, sir?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see, is that your</p> <p>23 signature at the bottom?</p> <p>24 A. Looks like it, yes.</p> <p>25 Q. And does that refresh your</p>

<p style="text-align: right;">Page 324</p> <p>1 DONDERO - 10/29/21</p> <p>2 recollection that you personally identified</p> <p>3 Mr. Waterhouse as the treasurer of NexPoint</p> <p>4 Advisors, L.P. effective as of April 11th,</p> <p>5 2019?</p> <p>6 A. No, I mean, not -- no.</p> <p>7 Q. Do you have any reason to doubt that</p> <p>8 Mr. Waterhouse served as the treasurer of</p> <p>9 NexPoint Advisors prior to the petition date?</p> <p>10 A. No, I don't have a reason to</p> <p>11 disagree with it. I just didn't have an</p> <p>12 awareness. And when you asked me earlier, the</p> <p>13 thing that was running through my mind is that</p> <p>14 it could have been, you know, Brian Mitts who</p> <p>15 has a strong accounting background at NexPoint.</p> <p>16 I just wasn't -- I didn't know, based on</p> <p>17 recollection, who was treasurer.</p> <p>18 Q. Okay. Were you aware that -- but</p> <p>19 you were aware, were you not, that</p> <p>20 Mr. Waterhouse wore multiple hats?</p> <p>21 MS. DEITSCH-PEREZ: Objection to</p> <p>22 form.</p> <p>23 Q. Withdrawn.</p> <p>24 You were aware, were you not, sir,</p> <p>25 that during the time that you served as</p>	<p style="text-align: right;">Page 325</p> <p>1 DONDERO - 10/29/21</p> <p>2 president of Highland, that Mr. Waterhouse</p> <p>3 served in capacities with respect to affiliated</p> <p>4 companies?</p> <p>5 A. I was aware that multiple senior</p> <p>6 executives had multiple titles at multiple</p> <p>7 different entities, but I didn't have specific</p> <p>8 awareness whatsoever on entities that Frank was</p> <p>9 or was not involved in.</p> <p>10 Q. Okay. But to the extent that he</p> <p>11 held a title with one of the affiliated</p> <p>12 companies, those affiliated companies would</p> <p>13 have been managed or controlled by you;</p> <p>14 correct?</p> <p>15 A. Generally.</p> <p>16 Q. You can't think of any title that he</p> <p>17 held with an affiliated company that wasn't</p> <p>18 managed by you, can you?</p> <p>19 A. No, not off the top of my head.</p> <p>20 Q. And you knew and intended prior to</p> <p>21 the petition date to have Mr. Waterhouse serve</p> <p>22 in multiple roles; is that fair?</p> <p>23 A. Yes.</p> <p>24 Q. Have you ever considered firing</p> <p>25 Mr. Waterhouse from his position as treasurer</p>
<p style="text-align: right;">Page 326</p> <p>1 DONDERO - 10/29/21</p> <p>2 of NexPoint Advisors?</p> <p>3 A. No.</p> <p>4 Q. Okay. As the president of NexPoint</p> <p>5 Advisors, do you believe that you had a</p> <p>6 responsibility to familiarize yourself with</p> <p>7 NexPoint's debts and obligations?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. Just generally.</p> <p>11 Q. Okay. Did you do anything to</p> <p>12 generally inform yourself of NexPoint's debts</p> <p>13 and obligations?</p> <p>14 A. Not -- not specifically that I can</p> <p>15 recall.</p> <p>16 Q. Can you recall doing anything to</p> <p>17 familiarize yourself with NexPoint's debts and</p> <p>18 obligations at any time?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did you ever look at NexPoint's</p> <p>23 balance sheet?</p> <p>24 A. Not -- not that I -- not that I</p> <p>25 recall.</p>	<p style="text-align: right;">Page 327</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Do you know whether NexPoint's</p> <p>3 balance sheet reflected obligations that it</p> <p>4 carried as liabilities that were due and owing</p> <p>5 to Highland?</p> <p>6 A. I was aware generally of the notes,</p> <p>7 but I didn't study the NexPoint balance sheet.</p> <p>8 Q. Do you believe that Mr. Waterhouse</p> <p>9 had any responsibility as NexPoint's treasurer</p> <p>10 to familiarize himself with NexPoint's debts</p> <p>11 and obligations?</p> <p>12 A. Yeah. I mean, the role is different</p> <p>13 and the burden is different, and Frank and his</p> <p>14 team orchestrated all the audits and compliance</p> <p>15 statements and regulatory stuff for all of the</p> <p>16 funds managed by NexPoint.</p> <p>17 Q. Well, you personally were</p> <p>18 responsible for Highland's audited financial</p> <p>19 statements, weren't you?</p> <p>20 MS. DEITSCH-PEREZ: Objection, form.</p> <p>21 A. No. I mean, "responsible" is not</p> <p>22 the right word. I mean, we -- I have to -- as</p> <p>23 the senior most executive, I have to -- to</p> <p>24 sign -- sign statements regarding completeness</p> <p>25 and no known frauds and those kinds of things,</p>



<p style="text-align: right;">Page 328</p> <p>1 DONDERO - 10/29/21</p> <p>2 but I am in no way involved in the preparation.</p> <p>3 Q. We will talk about that in a bit.</p> <p>4 Do you have any reason to believe</p> <p>5 today that Mr. Waterhouse failed to fulfill his</p> <p>6 responsibilities as treasurer of NexPoint to</p> <p>7 familiarize himself with NexPoint's debts and</p> <p>8 obligations?</p> <p>9 A. I don't know.</p> <p>10 Q. You can't identify any particular</p> <p>11 reason that you might have for concluding that</p> <p>12 Mr. Waterhouse failed to fulfill his duties as</p> <p>13 treasurer of NexPoint to familiarize himself</p> <p>14 with NexPoint's duties and respons -- duties</p> <p>15 and obligations; correct?</p> <p>16 A. Yes, I don't know.</p> <p>17 Q. Okay. Do you know who the</p> <p>18 authorized signatories are on NexPoint's bank</p> <p>19 accounts?</p> <p>20 A. No.</p> <p>21 Q. Do you know if you're an authorized</p> <p>22 signatory on NexPoint's bank accounts?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know if Mr. Waterhouse is an</p> <p>25 authorized signatory on NexPoint's bank</p>	<p style="text-align: right;">Page 329</p> <p>1 DONDERO - 10/29/21</p> <p>2 accounts?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know whether there is any</p> <p>5 current or former employee of Highland who did</p> <p>6 not hold an officer position at NexPoint who</p> <p>7 would have been an authorized signatory on</p> <p>8 NexPoint's bank accounts?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I don't know.</p> <p>12 Q. Can you identify any current or</p> <p>13 former employee of Highland who served as an</p> <p>14 officer of NexPoint at any time other than</p> <p>15 Ms. Thedford and Mr. Waterhouse?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay. Let's go to HCMS. Are you</p> <p>18 familiar with an entity called Highland Capital</p> <p>19 Management Services, Inc.?</p> <p>20 A. Generally, yes.</p> <p>21 Q. And can we refer to that as HCMS?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have a direct or indirect</p> <p>24 ownership interest in HCMS?</p> <p>25 A. I believe so.</p>
<p style="text-align: right;">Page 330</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And do you own a majority of the</p> <p>3 interest directly or indirectly in HCMS?</p> <p>4 A. I believe so.</p> <p>5 Q. Do you control HCMS?</p> <p>6 A. I believe so.</p> <p>7 Q. Have you -- has there ever been a</p> <p>8 period of time in HCMS's corporate existence</p> <p>9 where you did not control that entity?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Do you recall when HCMS was created?</p> <p>12 A. More than five years ago, but I</p> <p>13 don't remember when.</p> <p>14 Q. Do you have an understanding of the</p> <p>15 nature of HCMS's business?</p> <p>16 A. It manages some assets, and it was</p> <p>17 trying to create track records that then could</p> <p>18 be marketed.</p> <p>19 Q. What does it mean to create a track</p> <p>20 record that could be marketed?</p> <p>21 A. You execute investments and</p> <p>22 investment strategy that you can refine and</p> <p>23 articulate and show good results to potential</p> <p>24 third-party investors as -- as evidence that</p> <p>25 you can do it. And then that track record is</p>	<p style="text-align: right;">Page 331</p> <p>1 DONDERO - 10/29/21</p> <p>2 something the investors are willing to take a</p> <p>3 chance on and then give you separate account</p> <p>4 money along those lines.</p> <p>5 Q. Do you have a title with HCMS today?</p> <p>6 A. I don't know.</p> <p>7 Q. But you do control the entity; is</p> <p>8 that fair?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form, asked and answered.</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. Do you know whether</p> <p>13 Mr. Waterhouse has ever served as an officer of</p> <p>14 HCMS?</p> <p>15 A. I have no idea.</p> <p>16 Q. Can you identify any person in the</p> <p>17 world who has ever served as an officer of</p> <p>18 HCMS?</p> <p>19 A. I don't know what the incumbency</p> <p>20 certificate would look like for services, but</p> <p>21 I'm willing to be refreshed.</p> <p>22 Q. Do you know if anybody ever served</p> <p>23 as the chief -- withdrawn.</p> <p>24 Did HCMF ever have anybody serve in</p> <p>25 the capacity of chief financial officer?</p>



<p style="text-align: right;">Page 332</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. The subject of that question was</p> <p>3 HCMF. Is that what you meant to say, or did</p> <p>4 you mean Services?</p> <p>5 Q. No, I apologize. Thank you for the</p> <p>6 clarification. I did mean HCMS, so let me try</p> <p>7 again.</p> <p>8 Has anybody ever served in the</p> <p>9 capacity of chief financial officer of HCMS?</p> <p>10 A. HCMF.</p> <p>11 MS. DEITSCH-PEREZ: S.</p> <p>12 A. Not --</p> <p>13 Q. S.</p> <p>14 A. Not of Services -- not that --</p> <p>15 again, I don't know. I'm willing to be</p> <p>16 refreshed, but I -- I have no awareness.</p> <p>17 Q. Okay. As president -- as the person</p> <p>18 in control of HCMS, do you believe you had any</p> <p>19 responsibility to familiarize yourself with</p> <p>20 that entity's debts and obligations?</p> <p>21 A. Again, just generally, to the extent</p> <p>22 that they were material or an issue or</p> <p>23 whatever, but no more than generally.</p> <p>24 Q. Can you describe anything you ever</p> <p>25 did to generally familiarize yourself with</p>	<p style="text-align: right;">Page 333</p> <p>1 DONDERO - 10/29/21</p> <p>2 HCMS's debts and obligations?</p> <p>3 A. I guess my answer, which would apply</p> <p>4 to all of these entities, is awareness to know</p> <p>5 that the amounts were de minimis relative to</p> <p>6 the value of the entity, and the debt service</p> <p>7 costs or issues were very de minimis relative</p> <p>8 to the entities, but beyond that, I didn't</p> <p>9 study them.</p> <p>10 Q. Well, did -- did HCMFA have</p> <p>11 obligations to HCMLP that you would</p> <p>12 characterize as di minimis from HCMFA's</p> <p>13 perspective?</p> <p>14 A. Yeah, or just -- it never had</p> <p>15 obligations that were more than de minimis.</p> <p>16 Q. As -- as the person in control of</p> <p>17 HCMFA, did you ever have any concern that HCMFA</p> <p>18 would not be able to satisfy its obligations to</p> <p>19 HCMLP if -- if a demand was made?</p> <p>20 A. No.</p> <p>21 Q. Okay. Was anybody charged with the</p> <p>22 responsibility of familiarizing themselves with</p> <p>23 HCMS's debts and obligations?</p> <p>24 A. Again, to differentiate or separate</p> <p>25 myself from the treasury function or from what</p>
<p style="text-align: right;">Page 334</p> <p>1 DONDERO - 10/29/21</p> <p>2 Frank and his group were doing.</p> <p>3 From my perspective, I had to be</p> <p>4 aware about it -- aware of any obligations or</p> <p>5 notes or debt service costs, et cetera, but to</p> <p>6 the extent that I was aware and knew that it</p> <p>7 was de minimis, I didn't spend any time</p> <p>8 focusing on it, studying it, calculating it</p> <p>9 exactly, or anything like that.</p> <p>10 Having said that, we are highly</p> <p>11 compliant. We do -- we did audits every year</p> <p>12 with reputable accounting firms that were</p> <p>13 complete and in depth. And any obligations</p> <p>14 and/or assets, de minimis or not, in my view,</p> <p>15 would nonetheless have to be reflected or</p> <p>16 captured accurately and prepared for the</p> <p>17 auditors in supplying, you know, detail or</p> <p>18 source documents or whatever, whatever they do</p> <p>19 in accounting as part of the audit function.</p> <p>20 And all that would have done -- been</p> <p>21 done exactly and expertly, as far as I know,</p> <p>22 and it would have been done by Frank and his</p> <p>23 group.</p> <p>24 Q. Okay.</p> <p>25 A. That is -- I'm trying to give a</p>	<p style="text-align: right;">Page 335</p> <p>1 DONDERO - 10/29/21</p> <p>2 complete answer regarding a myriad of ways</p> <p>3 you've asked me kind of the same structural</p> <p>4 questions.</p> <p>5 Q. I am, and just to be clear, I'm</p> <p>6 asking kind of the same structural questions</p> <p>7 with respect to each of the entities at issue.</p> <p>8 I think you picked up on that. I hope you</p> <p>9 don't think I'm being repetitive.</p> <p>10 You mentioned Frank and his group in</p> <p>11 the context of HCMS. Did I hear that</p> <p>12 correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. HCMS did not have a shared</p> <p>15 services agreement with Highland; correct?</p> <p>16 MS. DEITSCH-PEREZ: You mean a</p> <p>17 written shared services agreement, John?</p> <p>18 Q. Do you understand the question, sir?</p> <p>19 A. Yeah. My answer would be the</p> <p>20 advisors like NexPoint and HFAM that had to</p> <p>21 have by law and regulatory statute have to have</p> <p>22 formal sub advisors and shared services</p> <p>23 agreements had formal shared services</p> <p>24 agreement.</p> <p>25 Entities that didn't need to have</p>

<p style="text-align: right;">Page 336</p> <p>1 DONDERO - 10/29/21</p> <p>2 formal written shared services agreements were</p> <p>3 often serviced similarly or -- or exactly the</p> <p>4 same as those entities, but without a written</p> <p>5 agreement, but with a verbal shared services</p> <p>6 agreement providing, again, all the same</p> <p>7 similar services.</p> <p>8 And the entities that didn't have a</p> <p>9 written shared services agreement weren't</p> <p>10 getting shared services or support from any</p> <p>11 other entities other than Highland doing the</p> <p>12 same thing for them that it did for the mutual</p> <p>13 funds.</p> <p>14 Q. Okay. Can you tell me who entered</p> <p>15 into an oral shared services agreement between</p> <p>16 Highland and HCMS?</p> <p>17 A. Boy, I can imagine way back in the</p> <p>18 day it would have been myself and Frank, but he</p> <p>19 and his group understood and knew that they</p> <p>20 were doing it for all the new entities that</p> <p>21 came along, and I can't imagine it was even</p> <p>22 talked about much over the years.</p> <p>23 Q. Did -- did HCMFA and NexPoint pay</p> <p>24 money to Highland under the shared services</p> <p>25 agreement until let's just say late 2020?</p>	<p style="text-align: right;">Page 337</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yeah, yes, and early into '21, I</p> <p>3 believe also.</p> <p>4 Q. Okay. As -- as part of the oral</p> <p>5 agreement that you referenced, was there -- was</p> <p>6 there ever an agreement that HCMS would pay any</p> <p>7 money to Highland in exchange for the services</p> <p>8 that Highland provided to it?</p> <p>9 A. I do not believe there was a</p> <p>10 financial remuneration aspect of it.</p> <p>11 Q. Okay. And do you recall during your</p> <p>12 time as president of Highland whether Highland</p> <p>13 ever received payment from HCMS for services</p> <p>14 rendered?</p> <p>15 MS. DEITSCH-PEREZ: And are we just</p> <p>16 talking about money?</p> <p>17 MR. MORRIS: Correct.</p> <p>18 A. Yeah, I don't -- I don't recall</p> <p>19 moneys being -- well, you know what, let me --</p> <p>20 let me clarify that a little bit.</p> <p>21 If there were any direct costs that</p> <p>22 Highland would have incurred like getting the</p> <p>23 audits done, you know, like if Price Waterhouse</p> <p>24 said, okay, give us the details on, you know,</p> <p>25 all the different entities that roll up into</p>
<p style="text-align: right;">Page 338</p> <p>1 DONDERO - 10/29/21</p> <p>2 the Highland entity.</p> <p>3 And then -- and they prepared</p> <p>4 statements or did work for services, Frank and</p> <p>5 his group would have passed through those costs</p> <p>6 and expected services and/or Dugaboy or any of</p> <p>7 the other entities to pay for direct</p> <p>8 out-of-pocket costs. But it wouldn't have paid</p> <p>9 a supplemental fee or profit or anything to</p> <p>10 Highland.</p> <p>11 Q. Okay. To the best of your</p> <p>12 recollection, during the time that you were</p> <p>13 president of Highland, did Highland ever</p> <p>14 receive anything of value from HCMS on account</p> <p>15 of services other than the reimbursement of</p> <p>16 out-of-pocket expenses?</p> <p>17 A. Yeah, I'm going to go back to my</p> <p>18 comment in terms of building track record. And</p> <p>19 I would use -- yeah, we had done it several</p> <p>20 times in the past and it had worked</p> <p>21 effectively. And that is -- you know, yeah, I</p> <p>22 mean, the -- the track record in CLO paper was</p> <p>23 what was used to track -- (inaudible) -- as an</p> <p>24 investor.</p> <p>25 And so, you know, to the extent that</p>	<p style="text-align: right;">Page 339</p> <p>1 DONDERO - 10/29/21</p> <p>2 the DAF wasn't paying a fee, along the way, to</p> <p>3 Highland for shared services, Highland got the</p> <p>4 benefit of the track record that was being</p> <p>5 built at the DAF to then market to third</p> <p>6 parties, which then created a revenue stream</p> <p>7 for Highland down the road.</p> <p>8 And I would say that was the same</p> <p>9 intent on Services.</p> <p>10 Q. Is there anything -- anything else</p> <p>11 of value that you believe HCMS provided to</p> <p>12 Highland in exchange for the services that</p> <p>13 Highland rendered?</p> <p>14 A. That would be primarily it. I would</p> <p>15 say there is probably times where Services</p> <p>16 provided liquidity for Highland or helped on</p> <p>17 investments that Highland was involved in, but</p> <p>18 I would have to refresh myself on exactly what.</p> <p>19 Q. Is it fair to say that HCMF -- HCMS</p> <p>20 never provided a revenue stream to Highland</p> <p>21 similar to the revenue stream that was provided</p> <p>22 by HCMFA and NexPoint under the shared services</p> <p>23 agreements?</p> <p>24 A. That is correct.</p> <p>25 Q. Okay. Did anybody at HCMF --</p>

<p style="text-align: right;">Page 340</p> <p>1 DONDERO - 10/29/21</p> <p>2 withdrawn.</p> <p>3 Did anybody at HCMS ever have the</p> <p>4 responsibility for familiarizing themselves</p> <p>5 with HCMS' debts and obligations?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. Frank and his team, as part of</p> <p>9 preparing the audited financials for all the</p> <p>10 entities, would have definitively been aware of</p> <p>11 all of them. Who else on the services</p> <p>12 incumbency certificate or -- would be aware or</p> <p>13 have knowledge, I don't know.</p> <p>14 Q. Okay. And when you refer to "Frank</p> <p>15 and his team," are any of them acting as an</p> <p>16 officer or employee of HCMS in what you are</p> <p>17 thinking about?</p> <p>18 A. I -- I don't know. I don't know.</p> <p>19 Did -- we haven't -- have we looked at the</p> <p>20 incumbency certificate for services?</p> <p>21 Q. No.</p> <p>22 A. I don't know. I don't know off the</p> <p>23 top of my head.</p> <p>24 Q. Okay. Let's just finish this up.</p> <p>25 Can you identify any current or</p>	<p style="text-align: right;">Page 341</p> <p>1 DONDERO - 10/29/21</p> <p>2 former Highland employee who served as an</p> <p>3 officer of HCMS at any time?</p> <p>4 A. No, I would need to be refreshed.</p> <p>5 Q. Okay. Can you identify --</p> <p>6 withdrawn. Let's go to the last one, HCRE.</p> <p>7 Are you familiar with an entity</p> <p>8 called HCRE Partners, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. And is that entity now known as</p> <p>11 NexPoint Real Estate Partners, LLC?</p> <p>12 A. You know what, I do believe it had a</p> <p>13 name change. I don't know if that is the name</p> <p>14 change, but that would make sense.</p> <p>15 Q. Okay. Can we just refer to that</p> <p>16 entity as HCRE?</p> <p>17 A. That is fine.</p> <p>18 Q. Okay. Do you have any direct or</p> <p>19 indirect ownership interest in HCRE?</p> <p>20 A. Yes.</p> <p>21 Q. And is it a majority interest to the</p> <p>22 best of your knowledge?</p> <p>23 A. Yes.</p> <p>24 Q. Do you control HCRE?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 342</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Have you controlled HCRE throughout</p> <p>3 its corporate existence?</p> <p>4 A. Yes.</p> <p>5 Q. Can you tell me what the nature of</p> <p>6 HCRE's business is?</p> <p>7 A. It makes real estate investments.</p> <p>8 Q. Do you have a title with that</p> <p>9 entity?</p> <p>10 A. I don't know, but I'm willing to be</p> <p>11 refreshed. And I assume its incumbency</p> <p>12 certificate looks similar to the ones that you</p> <p>13 have put up.</p> <p>14 Q. Can you identify for me today</p> <p>15 anybody who has ever served as an officer of</p> <p>16 HCRE at any time?</p> <p>17 A. I would rather be refreshed. I</p> <p>18 would imagine myself and Matt McGraner are two</p> <p>19 of those people, but I don't know for sure.</p> <p>20 Q. Okay. Without the incumbency</p> <p>21 certificates or other documentation, you are</p> <p>22 not able to give me any names other than Mr. --</p> <p>23 other than you and Mr. McGraner; is that fair?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. Do you know whether anybody</p>	<p style="text-align: right;">Page 343</p> <p>1 DONDERO - 10/29/21</p> <p>2 has ever been given the responsibility --</p> <p>3 withdrawn.</p> <p>4 Do you know whether anybody has ever</p> <p>5 had the responsibility for familiarizing</p> <p>6 themselves with the debts and obligations of</p> <p>7 HCRE?</p> <p>8 A. It would be the same answer as given</p> <p>9 on the other entities. It would be the</p> <p>10 treasurer, which is probably Frank. And if not</p> <p>11 the treasurer it would be Frank in his role and</p> <p>12 his team of putting together the complete and</p> <p>13 accurate financials of HCRE.</p> <p>14 Q. Other than putting together the</p> <p>15 complete and accurate financials of HCRE, did</p> <p>16 Frank and his team have any other</p> <p>17 responsibility with respect to understanding</p> <p>18 the debts and obligations of HCRE?</p> <p>19 MS. DEITSCH-PEREZ: Objection, form.</p> <p>20 A. Again, just the general overlay</p> <p>21 being that they were de minimis and -- de</p> <p>22 minimus, and the service obligations were de</p> <p>23 minimus relative to the value or operating</p> <p>24 income of the enterprise.</p> <p>25 In other words, had they been more</p>

<p style="text-align: right;">Page 344</p> <p>1 DONDERO - 10/29/21</p> <p>2 material or material, they would have had more</p> <p>3 focus. But they didn't deserve more focus.</p> <p>4 Q. And so is it fair to say that you</p> <p>5 didn't do anything to familiarize yourself with</p> <p>6 HCRE's debts and obligations?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. Not on a regular detailed basis, you</p> <p>10 know, just a general awareness.</p> <p>11 Q. Did you ever take any steps to</p> <p>12 review the affiliate loans and obligations that</p> <p>13 were due between and among Highland and its</p> <p>14 affiliated companies?</p> <p>15 A. Again, just generally.</p> <p>16 Q. What did you do?</p> <p>17 A. Like I said, I had a general</p> <p>18 awareness of them.</p> <p>19 Q. And did you receive from time to</p> <p>20 time lists or information that specifically</p> <p>21 described the amounts that were due and owing</p> <p>22 from the affiliates to Highland?</p> <p>23 A. Yeah, from time to time the amounts,</p> <p>24 yes.</p> <p>25 Q. Let's just quickly go to the</p>	<p style="text-align: right;">Page 345</p> <p>1 DONDERO - 10/29/21</p> <p>2 30(b)(6) notices if we can.</p> <p>3 MR. MORRIS: Can we put up a</p> <p>4 document that has been marked as</p> <p>5 Exhibit 47.</p> <p>6 (Exhibit 47 marked.)</p> <p>7 Q. Do you understand, Mr. Dondero, that</p> <p>8 you are here today in your individual capacity</p> <p>9 and in your capacity as what is called a</p> <p>10 30(b)(6) witness for certain entities?</p> <p>11 A. Yes, a little bit to my chagrin.</p> <p>12 And I don't think you will see me again as a</p> <p>13 30(b)(6) witness, but yes.</p> <p>14 Q. All right. Well, it wasn't my</p> <p>15 choice, so let's just go through it quickly.</p> <p>16 Have you seen this document before,</p> <p>17 sir?</p> <p>18 A. Yes.</p> <p>19 Q. And do you understand that you are</p> <p>20 here today in your capacity as NexPoint's</p> <p>21 corporate representative?</p> <p>22 A. Yes.</p> <p>23 Q. And do you understand that your</p> <p>24 answers today in your capacity as NexPoint's</p> <p>25 corporate representative will be binding on</p>
<p style="text-align: right;">Page 346</p> <p>1 DONDERO - 10/29/21</p> <p>2 NexPoint?</p> <p>3 MS. DEITSCH-PEREZ: As qualified by</p> <p>4 the objections that we made.</p> <p>5 MR. MORRIS: Sure.</p> <p>6 A. I will do the best I can.</p> <p>7 Q. Thank you so much.</p> <p>8 MR. MORRIS: Can we go to the next</p> <p>9 page, please. The last page. The topics.</p> <p>10 Q. Okay. Have you seen these topics</p> <p>11 before, sir?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you see that we asked for</p> <p>14 somebody to testify as to NexPoint's answer?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Are you aware that</p> <p>17 NexPoint -- are you aware that NexPoint filed</p> <p>18 an answer to Highland's amended complaint?</p> <p>19 A. Yes.</p> <p>20 Q. And did you review NexPoint's answer</p> <p>21 at any time before today's deposition?</p> <p>22 A. It was in the binder, I believe,</p> <p>23 that you guys sent over.</p> <p>24 Q. I think that's right. Are you</p> <p>25 prepared to answer questions today about</p>	<p style="text-align: right;">Page 347</p> <p>1 DONDERO - 10/29/21</p> <p>2 NexPoint's answer?</p> <p>3 MS. DEITSCH-PEREZ: Again, subject</p> <p>4 to our objection, but...</p> <p>5 A. Yeah, to the best I can.</p> <p>6 Q. Okay. The next topic concerns</p> <p>7 affirmative defenses.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have an understanding of what</p> <p>11 an affirmative defense is?</p> <p>12 A. Yes.</p> <p>13 Q. What is your understanding of an</p> <p>14 affirmative defense?</p> <p>15 A. I think it is those -- phrase that</p> <p>16 you see in most of our answers, the</p> <p>17 justification, estoppel, waiver, and then --</p> <p>18 and then there is some specific answers beyond</p> <p>19 that, I guess.</p> <p>20 Q. Okay. Are you prepared --</p> <p>21 MS. DEITSCH-PEREZ: John, I take it</p> <p>22 you will show him. He doesn't have to have</p> <p>23 them memorized.</p> <p>24 MR. MORRIS: No, of course not.</p> <p>25 MS. DEITSCH-PEREZ: So if you are</p>

<p style="text-align: right;">Page 348</p> <p>1 DONDERO - 10/29/21</p> <p>2 going to ask him, you will put it in front</p> <p>3 of him?</p> <p>4 MR. MORRIS: Of course.</p> <p>5 MS. DEITSCH-PEREZ: Thank you.</p> <p>6 Q. Are you prepared to testify today to</p> <p>7 the circumstances, communications, documents,</p> <p>8 and facts concerning NexPoint's affirmative</p> <p>9 defenses?</p> <p>10 A. Yeah, to the best that I can.</p> <p>11 Q. Okay. Do you see Topic 3 concerns</p> <p>12 the demand notes?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Are you prepared to testify</p> <p>15 about the demand notes, including with respect</p> <p>16 to the specific issues identified in that</p> <p>17 topic?</p> <p>18 MS. DEITSCH-PEREZ: Again, subject</p> <p>19 to the objections, particularly I think</p> <p>20 with respect to use of the proceeds.</p> <p>21 Q. We will get to that.</p> <p>22 Are you prepared to testify?</p> <p>23 A. I hope so.</p> <p>24 Q. And -- and I know that there is an</p> <p>25 objection there, but just a simple yes or no,</p>	<p style="text-align: right;">Page 349</p> <p>1 DONDERO - 10/29/21</p> <p>2 are you -- do you have knowledge of the -- of</p> <p>3 NexPoint's use of the proceeds of the note?</p> <p>4 A. Not specifically.</p> <p>5 Q. All right. Maybe I will refresh</p> <p>6 your recollection later.</p> <p>7 And then the last topic is discovery</p> <p>8 requests.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Are you prepared to testify today on</p> <p>12 NexPoint's behalf concerning Highland's</p> <p>13 discovery requests?</p> <p>14 A. To the best of my knowledge.</p> <p>15 Q. Okay. Did you do anything to</p> <p>16 prepare for today's deposition?</p> <p>17 A. I met with Deborah.</p> <p>18 Q. When did you do that?</p> <p>19 A. A couple of days ago for a couple of</p> <p>20 hours, and a few days before that for a couple</p> <p>21 of hours.</p> <p>22 Q. How many times --</p> <p>23 MS. DEITSCH-PEREZ: Are you also</p> <p>24 asking about calls?</p> <p>25 MR. MORRIS: I appreciate that.</p>
<p style="text-align: right;">Page 350</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yeah. There were a couple of phone</p> <p>3 calls too.</p> <p>4 Q. How many times did you communicate</p> <p>5 with Deborah in preparation for today's</p> <p>6 deposition?</p> <p>7 A. A half dozen, maybe, you know.</p> <p>8 Q. How many times --</p> <p>9 A. You know, in-person and phone calls,</p> <p>10 but...</p> <p>11 Q. How many times did you meet with her</p> <p>12 in-person?</p> <p>13 A. Two, maybe three.</p> <p>14 Q. And can you just tell me an estimate</p> <p>15 of the total time spent preparing for this</p> <p>16 deposition, inclusive of both the meetings and</p> <p>17 the phone calls?</p> <p>18 A. I don't know. Does it matter? I</p> <p>19 mean, I don't know. I don't know, four hours,</p> <p>20 four hours.</p> <p>21 Q. Okay. Did anybody participate in</p> <p>22 these meetings or phone calls other than your</p> <p>23 lawyers?</p> <p>24 A. No.</p> <p>25 Q. Did any lawyers participate in any</p>	<p style="text-align: right;">Page 351</p> <p>1 DONDERO - 10/29/21</p> <p>2 of these meetings or phone calls who didn't</p> <p>3 represent you in your individual capacity?</p> <p>4 A. No. It was just -- it was just</p> <p>5 Deborah and I.</p> <p>6 Q. Okay. Have you had a chance to</p> <p>7 review the transcript of Mr. Waterhouse's</p> <p>8 deposition?</p> <p>9 A. No. I haven't seen it yet.</p> <p>10 Q. You haven't seen any portion of that</p> <p>11 deposition?</p> <p>12 A. No.</p> <p>13 Q. Are you aware of anything that</p> <p>14 Mr. Waterhouse testified to in his deposition?</p> <p>15 A. No.</p> <p>16 Q. You have no knowledge of anything</p> <p>17 that Mr. Waterhouse said last week in his</p> <p>18 deposition; do I have that right?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. Do you have any knowledge as</p> <p>21 to anything your sister said in her deposition?</p> <p>22 A. No, other than she is glad it is</p> <p>23 over.</p> <p>24 Q. I hope -- I hope -- I hope she</p> <p>25 thinks at least I was respectful.</p>



<p style="text-align: right;">Page 352</p> <p>1 DONDERO - 10/29/21</p> <p>2 Did -- did you ever see her</p> <p>3 transcript -- the transcript from her</p> <p>4 deposition?</p> <p>5 A. No.</p> <p>6 Q. How about Mr. Seery, did you see the</p> <p>7 transcript from Mr. Seery's deposition?</p> <p>8 A. I didn't even know that Seery was</p> <p>9 deposed, so the answer is no.</p> <p>10 Q. Okay. Are you aware that Dave Klos</p> <p>11 was deposed?</p> <p>12 A. You know what, I think I had</p> <p>13 awareness of that, but I haven't seen that</p> <p>14 deposition.</p> <p>15 Q. Do you know anything about anything</p> <p>16 that he testified to the other day?</p> <p>17 A. Nope.</p> <p>18 Q. How about Kristin -- Kristin</p> <p>19 Hendrix, are you aware that she was deposed?</p> <p>20 A. I think I heard that she was also.</p> <p>21 Q. Do you know anything about anything</p> <p>22 that she testified to?</p> <p>23 A. No.</p> <p>24 Q. Did you look at any documents to</p> <p>25 refresh your recollection in advance of this</p>	<p style="text-align: right;">Page 353</p> <p>1 DONDERO - 10/29/21</p> <p>2 deposition other than the stack that I provided</p> <p>3 and the deposition notices?</p> <p>4 A. I mean just -- no, just a listing of</p> <p>5 the notes, but that is it.</p> <p>6 Q. Did you see any emails at all in</p> <p>7 connection with your preparation for today's</p> <p>8 deposition?</p> <p>9 A. No, not a single email.</p> <p>10 MR. MORRIS: Okay. Let's put up</p> <p>11 Exhibit 48, please.</p> <p>12 (Exhibit 48 marked.)</p> <p>13 Q. And I think you will see that this</p> <p>14 is the 30(b)(6) notice for HCMS. If we can go</p> <p>15 to the next page. And it is really the same --</p> <p>16 I will represent to you that the topics for</p> <p>17 HCMS are the same as the topics for NexPoint.</p> <p>18 Have you seen HCMS's 30(b)(6) notice</p> <p>19 that is up on the screen right now?</p> <p>20 A. Yes.</p> <p>21 Q. And if we took the time -- if I took</p> <p>22 the time to ask you the same questions about</p> <p>23 your ability to answer on behalf of HCMS --</p> <p>24 HCMS with respect to the topics identified</p> <p>25 there and subject to your counsel's objections,</p>
<p style="text-align: right;">Page 354</p> <p>1 DONDERO - 10/29/21</p> <p>2 would you be able to do so?</p> <p>3 A. Yes.</p> <p>4 MR. MORRIS: Let's put up Exhibit</p> <p>5 49, please.</p> <p>6 (Exhibit 49 marked.)</p> <p>7 Q. And this is the 30(b)(6) notice for</p> <p>8 HCRE. You're here today to testify on behalf</p> <p>9 of HCRE as its corporate representative. Do</p> <p>10 you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. And did you review the list of</p> <p>13 topics that we included in our 30(b)(6) notice</p> <p>14 for HCRE?</p> <p>15 A. Yes.</p> <p>16 Q. And subject to your counsel's</p> <p>17 objections, are you prepared to testify to the</p> <p>18 topics that are listed on the page that is up</p> <p>19 on the screen?</p> <p>20 A. Yes.</p> <p>21 MR. MORRIS: Okay. Can we please</p> <p>22 put up Exhibit 31.</p> <p>23 (Exhibit 31 marked.)</p> <p>24 Q. Mr. Dondero, we're putting up on the</p> <p>25 screen now your answer to the -- to Highland's</p>	<p style="text-align: right;">Page 355</p> <p>1 DONDERO - 10/29/21</p> <p>2 amended complaint.</p> <p>3 MS. DEITSCH-PEREZ: Is that in the</p> <p>4 notebook?</p> <p>5 MR. MORRIS: No, no. This is one</p> <p>6 that we had -- we had --</p> <p>7 MS. DEITSCH-PEREZ: All right. Hang</p> <p>8 on.</p> <p>9 MR. MORRIS: That's okay. That is</p> <p>10 why we're putting it up on the screen, and</p> <p>11 we will put it in the chat room. It is</p> <p>12 already in there, actually.</p> <p>13 MS. DEITSCH-PEREZ: Yeah, I think we</p> <p>14 have it here. Hold on. I think Nancy</p> <p>15 walked off with the duplicate of this, so</p> <p>16 if you need it, I will hand it to you.</p> <p>17 Q. Mr. Dondero, while we wait to see if</p> <p>18 your counsel has a hard copy, do you recall</p> <p>19 reviewing your answer to the plaintiff's</p> <p>20 amended complaint before it was filed?</p> <p>21 A. I don't know if I was involved at</p> <p>22 that juncture.</p> <p>23 Q. All right. So just to refresh your</p> <p>24 recollection, this is a document that was filed</p> <p>25 with the Court at the beginning of September.</p>



<p style="text-align: right;">Page 356</p> <p>1 DONDERO - 10/29/21</p> <p>2 If you recall, Highland filed an original</p> <p>3 complaint, and after you amended your answer</p> <p>4 late in August pursuant to an agreement,</p> <p>5 Highland filed amended complaints against</p> <p>6 certain of the obligors in the notes</p> <p>7 litigation.</p> <p>8 Does that refresh your recollection</p> <p>9 that this document was prepared in early</p> <p>10 September?</p> <p>11 A. Okay.</p> <p>12 Q. Okay.</p> <p>13 A. I don't have specific memory.</p> <p>14 Q. Okay. So as always, Mr. Dondero, we</p> <p>15 have done this many times before, if there is</p> <p>16 anything in the document that you think that</p> <p>17 you need to see because it is a little bit of a</p> <p>18 lengthy document, will you let me know that?</p> <p>19 A. Sure.</p> <p>20 MS. DEITSCH-PEREZ: Yeah. And we</p> <p>21 have a copy if you need to stop and take a</p> <p>22 look. We did get a hard copy. We have a</p> <p>23 hard copy here.</p> <p>24 Q. Okay.</p> <p>25 A. All right.</p>	<p style="text-align: right;">Page 357</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So -- so let me ask the question</p> <p>3 again then: Do you recall, with that</p> <p>4 background, having reviewed and approved the</p> <p>5 filing of this document at the beginning of</p> <p>6 September 2021?</p> <p>7 A. Generally.</p> <p>8 Q. Okay. As you sit here today, are</p> <p>9 you aware of anything in this document that is</p> <p>10 inaccurate?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Okay. Are you aware of anything in</p> <p>13 the document that you believe should be</p> <p>14 modified or amended to make it more complete or</p> <p>15 more accurate?</p> <p>16 A. Not as of this moment.</p> <p>17 Q. Okay. Can we please go to Paragraph</p> <p>18 83. Okay. Right there.</p> <p>19 So do you see that on -- on page 13</p> <p>20 of the exhibit, we have in Paragraphs 82</p> <p>21 through 91 what are called your affirmative</p> <p>22 defenses?</p> <p>23 A. Yes.</p> <p>24 Q. All right. I'm going to skip the</p> <p>25 one in 82 for the moment, but focusing on 83.</p>
<p style="text-align: right;">Page 358</p> <p>1 DONDERO - 10/29/21</p> <p>2 Can you just read that to yourself and tell me</p> <p>3 when you have done that?</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware of any facts that</p> <p>6 concern this particular affirmative defense?</p> <p>7 A. Which notes are these again?</p> <p>8 Q. These would be your personal notes.</p> <p>9 A. The -- personal notes. I'm trying</p> <p>10 to remember. No, I -- well, if you read the</p> <p>11 question one more time.</p> <p>12 Q. Sure. Just so -- so to make sure</p> <p>13 that you understand, because I'm not here to</p> <p>14 trick you, this is your answer to Highland's</p> <p>15 complaint against you where Highland is trying</p> <p>16 to recover on the notes that you signed.</p> <p>17 Do you understand that?</p> <p>18 A. Right.</p> <p>19 Q. Okay. So in Paragraph 83 you have</p> <p>20 asserted an affirmative defense that the</p> <p>21 plaintiff's claims are barred in whole or in</p> <p>22 part due to waiver.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have any facts that you can</p>	<p style="text-align: right;">Page 359</p> <p>1 DONDERO - 10/29/21</p> <p>2 share with me that concern that particular</p> <p>3 affirmative defense?</p> <p>4 MS. DEITSCH-PEREZ: And, again, just</p> <p>5 in this particular answer.</p> <p>6 MR. MORRIS: That is all I'm asking</p> <p>7 about.</p> <p>8 Q. We're going to go through the answer</p> <p>9 for each one of them. So just one at a time.</p> <p>10 We're only talking about your -- your notes.</p> <p>11 A. No, not the moment.</p> <p>12 Q. Let's go to Paragraph 84.</p> <p>13 Do you see Paragraph 84 states,</p> <p>14 among other things, that plaintiff's claims are</p> <p>15 barred, in whole or in part, due to estoppel?</p> <p>16 A. Yes.</p> <p>17 Q. Can you share with me any facts that</p> <p>18 you are aware of that concern that particular</p> <p>19 affirmative defense?</p> <p>20 A. No.</p> <p>21 Q. Okay. I'm going to skip over 85</p> <p>22 because I've gotten that answer elsewhere. If</p> <p>23 we can go to 86, do you see that Paragraph 86</p> <p>24 asserts as an affirmative defense, among other</p> <p>25 things, that, quote: Plaintiff's claims may be</p>

<p style="text-align: right;">Page 360</p> <p>1 DONDERO - 10/29/21</p> <p>2 barred, in whole or in part, due to failure of</p> <p>3 consideration, closed quote?</p> <p>4 A. Right, I see that.</p> <p>5 Q. Do you -- do you -- do you</p> <p>6 acknowledge that Highland transferred to you an</p> <p>7 amount of money equal to the principal amount</p> <p>8 on each of the notes that are at issue?</p> <p>9 A. I believe -- yes.</p> <p>10 Q. Okay. I appreciate that.</p> <p>11 Do you have any facts that would</p> <p>12 support the affirmative defense that is set</p> <p>13 forth in Paragraph 86?</p> <p>14 A. No.</p> <p>15 Q. Okay. And then, finally,</p> <p>16 Paragraph 88 asserts, among other things, that</p> <p>17 the fraudulent transfer claim should be barred,</p> <p>18 in whole or in part, because the alleged</p> <p>19 fraudulent transfer -- and I'm summarizing</p> <p>20 here -- was taken in good faith and for</p> <p>21 reasonably equivalent value.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you have any facts that</p> <p>25 concern that particular affirmative defense?</p>	<p style="text-align: right;">Page 361</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Let me read that one more time.</p> <p>3 Q. Take your time.</p> <p>4 A. I think that one is -- I'm trying --</p> <p>5 I'm trying to remember if that one -- if the</p> <p>6 partner defense is on alternative comp that</p> <p>7 could have been taken or forgiveness that was</p> <p>8 in lieu of other comp -- I'm trying to remember</p> <p>9 if that falls under this category. I think it</p> <p>10 does.</p> <p>11 Q. Okay. Is there anything else that</p> <p>12 you can -- any other facts that you can think</p> <p>13 of that concern the affirmative defense in</p> <p>14 Paragraph 88?</p> <p>15 A. I mean, the -- yes. Okay. To the</p> <p>16 extent that the -- in lieu of additional comp</p> <p>17 falls under there, so does the incentives to --</p> <p>18 the incentive to me to help monetize illiquid</p> <p>19 investments better faster.</p> <p>20 Q. And does that relate to the three</p> <p>21 portfolio companies that are the subject of the</p> <p>22 oral agreement between you and your sister or</p> <p>23 to something else?</p> <p>24 A. It is --</p> <p>25 MS. DEITSCH-PEREZ: Objection, form.</p>
<p style="text-align: right;">Page 362</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. -- regarding that, yeah.</p> <p>3 Q. It is the same thing. Do I have</p> <p>4 that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Thank you very much.</p> <p>7 Is there anything else you can share</p> <p>8 with me about the facts that concern the</p> <p>9 affirmative defense in Paragraph 88?</p> <p>10 A. I think that is -- that is -- that</p> <p>11 is it.</p> <p>12 Q. Okay. Can we change now to</p> <p>13 Exhibit 16, which you should have in your pile,</p> <p>14 which is the answer that was filed by the HCMS</p> <p>15 to Highland's amended complaint.</p> <p>16 (Exhibit 16 marked.)</p> <p>17 A. Which number is this?</p> <p>18 Q. It is number 16.</p> <p>19 A. 16 in the binder?</p> <p>20 Q. It should be, yeah.</p> <p>21 A. Yes. Okay. I got it.</p> <p>22 Q. Okay. And is the first page titled</p> <p>23 Defendant, Highland Capital Management</p> <p>24 Services, Inc.'s Answer to Amended Complaint?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 363</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. So these questions I'm asking</p> <p>3 in your capacity as HCMS' 30(b)(6) witness.</p> <p>4 Okay?</p> <p>5 A. Okay.</p> <p>6 Q. And you recall that one of the</p> <p>7 topics under the deposition notice was HCMS'</p> <p>8 answer; right?</p> <p>9 Are you prepared to answer questions</p> <p>10 about this document?</p> <p>11 A. Yep, to the best I can.</p> <p>12 Q. Okay. Have you seen it before?</p> <p>13 A. Yes.</p> <p>14 Q. And do you know whether HCMS</p> <p>15 authorized this Stinson firm to file this</p> <p>16 document on its behalf at the beginning of</p> <p>17 2021?</p> <p>18 A. Yes.</p> <p>19 Q. Did you personally have any role in</p> <p>20 reviewing and preparing this document?</p> <p>21 A. I mean, just generally that the</p> <p>22 transition of former Judge Lynn passing and</p> <p>23 Bonds Ellis not being able to handle</p> <p>24 complexity -- maybe I shouldn't say it like</p> <p>25 that -- or handle this aspect of the case</p>

<p style="text-align: right;">Page 364</p> <p>1 DONDERO - 10/29/21</p> <p>2 and/or -- I think it was -- yeah, just</p> <p>3 whatever. He moved to Stinson from -- I think</p> <p>4 maybe it started at Bonds Ellis and then maybe</p> <p>5 it went to Wick Phillips and then it went to</p> <p>6 Stinson, but, you know, there was a migration</p> <p>7 of these notes in general.</p> <p>8 Q. Was there a particular person who</p> <p>9 was charged with the responsibility of</p> <p>10 approving and authorizing the filing of this</p> <p>11 document on behalf of HCMS?</p> <p>12 A. Like I said, I think generally that</p> <p>13 was myself.</p> <p>14 Q. Okay. Are you aware of anything in</p> <p>15 this document today that is inaccurate in any</p> <p>16 way?</p> <p>17 A. Not specifically.</p> <p>18 Q. Are you aware of anything generally</p> <p>19 in this document that is inaccurate in any way?</p> <p>20 A. Not at the moment.</p> <p>21 Q. Are you aware of anything in this</p> <p>22 document that you believe should be modified or</p> <p>23 amended to make it more complete or more</p> <p>24 accurate?</p> <p>25 A. Not yet.</p>	<p style="text-align: right;">Page 365</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Let's go to Paragraph 40 -- 94,</p> <p>3 please.</p> <p>4 MS. DEITSCH-PEREZ: We may be</p> <p>5 imperfect creatures as lawyers.</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. I was just going to say, do</p> <p>10 you see from Paragraphs 94 through 102 HCMS has</p> <p>11 set forth its affirmative defenses?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Let's -- let's start with the</p> <p>14 first one.</p> <p>15 Do you see in Paragraph 94 HCMS</p> <p>16 asserts that, quote: Plaintiff's claims are</p> <p>17 barred, in whole or in part, by the doctrine of</p> <p>18 justification and/or repudiation?</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware of any facts that</p> <p>21 concern that particular defense?</p> <p>22 A. I believe this -- they were material</p> <p>23 prepayments of the loan. I believe that is --</p> <p>24 those are the -- they were material and</p> <p>25 numerous prepayments of the loan, which I think</p>
<p style="text-align: right;">Page 366</p> <p>1 DONDERO - 10/29/21</p> <p>2 was -- that is incorporated into that defense.</p> <p>3 Q. Okay. We will talk about the -- the</p> <p>4 details of that in a moment, but are there any</p> <p>5 other kind of broad statements that you can</p> <p>6 give me that identify facts related to this</p> <p>7 particular affirmative defense?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. That is all I have at the moment.</p> <p>11 Q. Okay. Do you know whether any</p> <p>12 document that HCMS ever filed with the</p> <p>13 bankruptcy court ever asserted, as in a</p> <p>14 defense, that they didn't have to pay because</p> <p>15 they had prepaid any obligations that were due</p> <p>16 and owing?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. I don't have awareness.</p> <p>20 Q. And this document doesn't -- doesn't</p> <p>21 use the word "prepayment" anywhere, does it?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't know.</p> <p>25 Q. Do you know of anything that HCMS</p>	<p style="text-align: right;">Page 367</p> <p>1 DONDERO - 10/29/21</p> <p>2 ever did before this week to put Highland on</p> <p>3 notice that it contended that it didn't have to</p> <p>4 pay its obligations under the notes because of</p> <p>5 a prepayment defense?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. We have no records. I'm not sure we</p> <p>9 would have ever been in a position to -- to do</p> <p>10 that. The -- you know, we were relying on</p> <p>11 shared services from Highland, and Highland had</p> <p>12 all the records regarding the amounts and</p> <p>13 prepayments, et cetera.</p> <p>14 Q. When did you learn that HCMS had</p> <p>15 made a prepayment to Highland?</p> <p>16 A. I don't know, but I -- I imagine --</p> <p>17 I imagine it was -- if you are asking why it</p> <p>18 wasn't mentioned earlier but then mentioned</p> <p>19 later, it is because somewhere in that time</p> <p>20 period we became aware.</p> <p>21 Q. So you didn't -- you didn't have</p> <p>22 knowledge of the prepayment until the debtor</p> <p>23 produced documents. Do I have that right?</p> <p>24 Withdrawn.</p> <p>25 How did you learn that HCMS made a</p>

<p style="text-align: right;">Page 368</p> <p>1 DONDERO - 10/29/21</p> <p>2 prepayment?</p> <p>3 A. I don't know. I just know that we</p> <p>4 became aware of that being a material fact</p> <p>5 somewhere along the line.</p> <p>6 Q. Do you remember when you learned</p> <p>7 that material fact?</p> <p>8 A. No.</p> <p>9 Q. Do you have any facts that you can</p> <p>10 share with me concerning the prepayment?</p> <p>11 A. Eventually there was a spreadsheet</p> <p>12 that summarized it, but I don't -- I don't</p> <p>13 know -- I don't know when that occurred.</p> <p>14 Q. Does -- does this defense of</p> <p>15 prepayment apply to demand notes or a term</p> <p>16 note?</p> <p>17 A. I would -- I would -- I would say,</p> <p>18 you know, primarily a term note, but -- yeah, I</p> <p>19 think primarily the term note because I think</p> <p>20 that was the one that was declared to be in</p> <p>21 default of share, you know, whatever, so I</p> <p>22 think it was regarding the term note.</p> <p>23 Q. Do you recall -- do you have any</p> <p>24 knowledge as to when the prepayment was made?</p> <p>25 A. I believe there were numerous and</p>	<p style="text-align: right;">Page 369</p> <p>1 DONDERO - 10/29/21</p> <p>2 material prepayments, but I don't know exactly</p> <p>3 when they were made.</p> <p>4 Q. Do you know what year they were</p> <p>5 made?</p> <p>6 A. No, but -- no, but -- no, I don't.</p> <p>7 MS. DEITSCH-PEREZ: If you want,</p> <p>8 John, if you would like for him to give you</p> <p>9 dates, he could probably dig up the</p> <p>10 spreadsheet and give you dates, but you</p> <p>11 have it also.</p> <p>12 MR. MORRIS: Thank you. Okay. I</p> <p>13 think we're doing just fine here.</p> <p>14 Q. Do you know if there were any</p> <p>15 prepayments made by HCMS in 2018?</p> <p>16 A. I don't know the specifics off the</p> <p>17 top of my head.</p> <p>18 Q. Do you know if HCMS made any</p> <p>19 prepayments in 2019?</p> <p>20 A. I don't know the specifics off the</p> <p>21 top of my head.</p> <p>22 Q. Are you aware that under the term</p> <p>23 note, HCMS was required to pay annual</p> <p>24 installment payments at the end of each year?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 370</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. I wouldn't say it like that.</p> <p>4 Q. We will look -- we will look at the</p> <p>5 documents in a few minutes.</p> <p>6 Are you aware of any facts that</p> <p>7 support the justification or repudiation</p> <p>8 defense in Paragraph 94 other than what you</p> <p>9 have testified to so far?</p> <p>10 A. I think it is largely the prepayment</p> <p>11 aspect of it that is captured there.</p> <p>12 Q. Okay. And -- and -- all right. I</p> <p>13 will leave it at that.</p> <p>14 Let's go to Paragraph 95. Do you</p> <p>15 see the affirmative defense in 95 is that,</p> <p>16 quote, plaintiff's claims are barred in whole</p> <p>17 or in part by the doctrine of estoppel.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any facts as the</p> <p>21 30(b)(6) witness of HCMS that concern that</p> <p>22 particular affirmative defense?</p> <p>23 A. You know, I think for both 95 and</p> <p>24 96, the way I understand it is that was</p> <p>25 reliance on Highland's and Highland's screw-up,</p>	<p style="text-align: right;">Page 371</p> <p>1 DONDERO - 10/29/21</p> <p>2 to the extent that there was a screw-up, on the</p> <p>3 term loans.</p> <p>4 Q. What screw-up are you referring to?</p> <p>5 A. Well, we didn't have accountants or</p> <p>6 employees at Services, you know, and Services</p> <p>7 was relying on Highland and shared services to</p> <p>8 stay in compliance or to -- on the various</p> <p>9 loans.</p> <p>10 Q. Did you ever personally instruct</p> <p>11 anybody in December of 2020 to make a payment</p> <p>12 on behalf of HCMS under the term note?</p> <p>13 A. To make -- I'm sorry, is this --</p> <p>14 what was the timeframe again?</p> <p>15 Q. December 2020 -- let's just say</p> <p>16 anytime in 2020. Did you, in your capacity as</p> <p>17 the person in control of HCMS, ever direct or</p> <p>18 authorize any person in the world to make a</p> <p>19 payment from HCMS to Highland in satisfaction</p> <p>20 of the obligation that was due under the term</p> <p>21 note at the end of the year?</p> <p>22 A. Not that -- not that I recall.</p> <p>23 Q. Okay. Do you know whether anybody</p> <p>24 acting on behalf of HCMS ever instructed or</p> <p>25 authorized Highland to make a payment on</p>

<p style="text-align: right;">Page 372</p> <p>1 DONDERO - 10/29/21</p> <p>2 account of HCMS's term note to Highland?</p> <p>3 A. Well, again, and maybe I didn't say</p> <p>4 it clearly enough. I think there was a</p> <p>5 reliance in the due course aspect, especially</p> <p>6 on small amounts, and it would have been done</p> <p>7 by Highland personnel on behalf of Services.</p> <p>8 MR. MORRIS: Okay. Move to strike.</p> <p>9 Q. And I'm going to ask you,</p> <p>10 Mr. Dondero, to be patient with me and to</p> <p>11 listen carefully to my question.</p> <p>12 Are you aware of anybody acting on</p> <p>13 behalf of HCMS, whoever instructed Highland to</p> <p>14 make a payment in satisfaction of any payment</p> <p>15 that was due at the year-end of 2020 under the</p> <p>16 term note?</p> <p>17 A. Not specifically, but I'm saying I</p> <p>18 don't think it needed to be made specifically.</p> <p>19 Q. Okay. So you are not aware of any</p> <p>20 instruction that was ever given to Highland by</p> <p>21 HCMS to make the payment; is that fair? You</p> <p>22 relied on the course of dealing?</p> <p>23 A. Right. I relied on ordinary course.</p> <p>24 I don't believe there was a specific -- I'm not</p> <p>25 aware of a specific request.</p>	<p style="text-align: right;">Page 373</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. And you were aware that the</p> <p>3 payment was due at the end of the year; isn't</p> <p>4 that right?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. Not -- not specifically. There</p> <p>8 is -- to be bona fide notes, there is -- I know</p> <p>9 there is -- there is tax structuring and things</p> <p>10 that the auditors want to see in terms of -- of</p> <p>11 regular payment that everything just doesn't</p> <p>12 accrue indefinitely, but what those roles are</p> <p>13 and when and if it needs to be paid and whether</p> <p>14 it was by the end of the year or not.</p> <p>15 I'm generally not specifically</p> <p>16 knowledgeable of or involved in, and nor do I</p> <p>17 have an awareness that was it or could it have</p> <p>18 been satisfied by other payments throughout the</p> <p>19 year. I'm not -- I'm not the person for that</p> <p>20 knowledge.</p> <p>21 Q. Now, do you recall in December of</p> <p>22 2020 there was some tension between you and</p> <p>23 Mr. Seery?</p> <p>24 A. Tension between me and Mr. Seery. I</p> <p>25 would say there was tension between Mr. Seery</p>
<p style="text-align: right;">Page 374</p> <p>1 DONDERO - 10/29/21</p> <p>2 and everybody. He was trying to steal the</p> <p>3 estate, you know, so yes.</p> <p>4 MR. MORRIS: I move to strike.</p> <p>5 Q. You were asked to resign from</p> <p>6 Highland in late September of 2020; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you did resign as of October</p> <p>9 9th, 2020; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And do you recall that in early</p> <p>12 December, Highland sought a temporary</p> <p>13 restraining order against you?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall that Highland</p> <p>16 obtained a temporary restraining order against</p> <p>17 you in early December?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you recall that the</p> <p>20 advisors that you controlled filed a motion</p> <p>21 against the debtor in mid December 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And do you recall that that</p> <p>24 motion was curved by the Court in the middle of</p> <p>25 December?</p>	<p style="text-align: right;">Page 375</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes, roughly.</p> <p>3 Q. And do you recall that at the end of</p> <p>4 November, Highland had given notice of</p> <p>5 termination of the shared services agreements</p> <p>6 with the advisors?</p> <p>7 A. I believe they did that multiple</p> <p>8 times or extended it multiple times. I can't</p> <p>9 remember if that was -- if it was done then or</p> <p>10 not.</p> <p>11 Q. Okay. And it is your testimony that</p> <p>12 notwithstanding those facts and circumstances,</p> <p>13 you relied on Highland to make the payment that</p> <p>14 HCMS owed at the end of the year?</p> <p>15 A. Yes, absolutely. We were still</p> <p>16 deluded in terms of thinking that Seery was</p> <p>17 working to resolve the estate, not to steal the</p> <p>18 estate.</p> <p>19 MR. MORRIS: I move to strike.</p> <p>20 Q. Do you have any other facts and</p> <p>21 circumstances that relate to the affirmative</p> <p>22 defenses in Paragraphs 95 and 96?</p> <p>23 A. I mean, not at the moment, not that</p> <p>24 I want to volunteer. When you ask more</p> <p>25 questions about the specifics, I guess we will</p>



<p style="text-align: right;">Page 376</p> <p>1 DONDERO - 10/29/21</p> <p>2 get to some of it.</p> <p>3 Q. Well, I'm asking you questions now.</p> <p>4 You are the 30(b)(6) witness. This is one of</p> <p>5 the topics that you were supposed to be</p> <p>6 prepared to answer questions about, and I would</p> <p>7 just like to know everything that you have in</p> <p>8 your head as to facts that relate to these two</p> <p>9 affirmative defenses.</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 Q. Because if I don't ask the right</p> <p>13 question later, you know, we can't do that;</p> <p>14 right?</p> <p>15 So do you have any other facts that</p> <p>16 you are aware of that relate to these two</p> <p>17 particular affirmative defenses?</p> <p>18 MS. DEITSCH-PEREZ: John, the fact</p> <p>19 that it's a 30(b)(6) deposition doesn't</p> <p>20 absolve you of the necessity to ask</p> <p>21 questions.</p> <p>22 MR. MORRIS: I asked the question.</p> <p>23 Q. Can I please have an answer?</p> <p>24 A. Again, the notes in general are de</p> <p>25 minimis relative to asset values of Highland or</p>	<p style="text-align: right;">Page 377</p> <p>1 DONDERO - 10/29/21</p> <p>2 the counterparties. So the annual obligations</p> <p>3 are even more de minimis or a million bucks or</p> <p>4 less than a million bucks.</p> <p>5 There was never an intent, nor would</p> <p>6 there be a logical intent to -- from my</p> <p>7 perspective or any of the entities that had</p> <p>8 notice to Highland to be in default. And it is</p> <p>9 not logical that they would do that for any</p> <p>10 purpose.</p> <p>11 And the facts around the curing</p> <p>12 quickly of the notes and getting the curing</p> <p>13 amounts from Highland and making the payments</p> <p>14 and Highland accepting them as they're defining</p> <p>15 what it took to cure it, I think, are all, you</p> <p>16 know, the key facts that make any, you know,</p> <p>17 acceleration argument, you know, ridiculous.</p> <p>18 Q. Okay. Anything else?</p> <p>19 A. That's it at this point.</p> <p>20 MR. MORRIS: Okay. Let's go to</p> <p>21 Exhibit 17, please.</p> <p>22 (Exhibit 17 marked.)</p> <p>23 Q. This is HCRE's answer. Do you see</p> <p>24 that, sir?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 378</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And I'm going to ask these questions</p> <p>3 in your capacity as the 30(b)(6) representative</p> <p>4 of HCRE. Do you understand that?</p> <p>5 A. Yes.</p> <p>6 Q. Have you seen this document before?</p> <p>7 A. Yes.</p> <p>8 Q. Are you aware of anything in this</p> <p>9 document that is inaccurate today?</p> <p>10 A. I mean, I think 96 we put in there</p> <p>11 similar to the other affirmative defenses in</p> <p>12 case there was a prepayment. But, again, we</p> <p>13 have been so blocked from getting information</p> <p>14 and detail we didn't know it at the time</p> <p>15 regarding, you know, prepayments.</p> <p>16 So I don't think the prepayment</p> <p>17 defense works for 96. So that would be my</p> <p>18 clarification of an inaccuracy.</p> <p>19 Q. Why do you believe that the</p> <p>20 prepayment defense doesn't work in Paragraph 96</p> <p>21 for HCRE?</p> <p>22 A. Because I don't think there were any</p> <p>23 prepayments.</p> <p>24 Q. All right. I appreciate that.</p> <p>25 A. We didn't -- we didn't know it at</p>	<p style="text-align: right;">Page 379</p> <p>1 DONDERO - 10/29/21</p> <p>2 the time --</p> <p>3 Q. Okay.</p> <p>4 A. -- we put this together.</p> <p>5 Q. Is there any other aspect of this</p> <p>6 document that you believe is inaccurate today?</p> <p>7 A. Not as far as I know.</p> <p>8 Q. Is there anything in this document</p> <p>9 that you believe should be modified or amended</p> <p>10 to make it more accurate or more complete?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. Not yet.</p> <p>14 Q. Okay. Looking at Paragraph 96, I</p> <p>15 believe you just testified that,</p> <p>16 notwithstanding the assertion of the defense</p> <p>17 therein, you are not aware of any facts</p> <p>18 concerning the prepayment defense that you</p> <p>19 described earlier for HCMS.</p> <p>20 Do I have that right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you have any facts at all</p> <p>23 that relate to the affirmative defense in</p> <p>24 Paragraph 96?</p> <p>25 A. I don't believe so at this moment.</p>



<p style="text-align: right;">Page 380</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. How about Paragraphs 97 and</p> <p>3 98? Do you have any facts that relate to those</p> <p>4 affirmative defenses?</p> <p>5 A. It would be the same answer as on</p> <p>6 the last one.</p> <p>7 Q. Okay. I appreciate that. And so --</p> <p>8 but we don't have to go over it again. I will</p> <p>9 just leave it at that.</p> <p>10 Let's go to Exhibit 15, please.</p> <p>11 (Exhibit 15 marked.)</p> <p>12 MR. MORRIS: This is the next --</p> <p>13 MS. DEITSCH-PEREZ: Hey, John.</p> <p>14 John, can we take a -- like a very quick</p> <p>15 restroom break?</p> <p>16 MR. MORRIS: You know, if we could</p> <p>17 just get through this document, which</p> <p>18 shouldn't take long, then perhaps we can</p> <p>19 take a short half-hour lunch break.</p> <p>20 MS. DEITSCH-PEREZ: Well, we can</p> <p>21 take a short half-hour lunch break after we</p> <p>22 get through this, but I just need to run to</p> <p>23 the restroom.</p> <p>24 MR. MORRIS: Okay.</p> <p>25 MS. DEITSCH-PEREZ: So you can leave</p>	<p style="text-align: right;">Page 381</p> <p>1 DONDERO - 10/29/21</p> <p>2 the screen on if you want so that we can</p> <p>3 get back fast.</p> <p>4 MR. MORRIS: My pleasure, Deborah.</p> <p>5 No problem.</p> <p>6 MS. DEITSCH-PEREZ: Thank you.</p> <p>7 VIDEOGRAPHER: Off the record,</p> <p>8 12:40.</p> <p>9 (Recess taken 12:40 p.m. to 12:51 p.m.)</p> <p>10 Q. Before we go on to this document,</p> <p>11 sir, did HCRE have a shared services agreement</p> <p>12 with Highland?</p> <p>13 VIDEOGRAPHER: We're back on the</p> <p>14 record.</p> <p>15 MR. MORRIS: Oh, do I need to read</p> <p>16 the question again?</p> <p>17 COURT REPORTER: No, I've got it.</p> <p>18 A. I -- I don't believe it is a formal</p> <p>19 written one. I think it is just a verbal one.</p> <p>20 Q. And who is the verbal agreement</p> <p>21 between?</p> <p>22 A. It was between Highland and HCRE.</p> <p>23 Now it is between NexPoint and HCRE.</p> <p>24 Q. And who entered into the agreement</p> <p>25 between Highland and HCRE?</p>
<p style="text-align: right;">Page 382</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I would give the same answer I gave</p> <p>3 before where it was just -- it was just</p> <p>4 understood that we supported all the related</p> <p>5 entities or entrepreneurial efforts and it was,</p> <p>6 you know, modest amounts of work.</p> <p>7 There wasn't specific financial</p> <p>8 remuneration, but -- and NexPoint is a good</p> <p>9 example, too. There was a significant track</p> <p>10 record gulf that was able to be used to raise</p> <p>11 other money.</p> <p>12 Q. I'm just asking you who entered into</p> <p>13 the agreement between Highland and -- and HCRE</p> <p>14 for the provision of services by Highland?</p> <p>15 MS. DEITSCH-PEREZ: Asked and</p> <p>16 answered.</p> <p>17 A. Yeah, again, same answer as before.</p> <p>18 I don't think anybody specifically, formally</p> <p>19 did it.</p> <p>20 Q. Okay. Is it -- are the terms of the</p> <p>21 agreement written down anywhere?</p> <p>22 A. No, like I said, it is just</p> <p>23 understood the accounting department and tax</p> <p>24 department would handle the accounting and tax</p> <p>25 for all entities.</p>	<p style="text-align: right;">Page 383</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Did the legal department also</p> <p>3 provide services to HCRE?</p> <p>4 A. It would depend on the specific</p> <p>5 entity. In the case of HCRE I think they used</p> <p>6 the -- the two lawyers that worked at NexPoint.</p> <p>7 I don't think they used the legal</p> <p>8 staff per se. I think they -- the shared</p> <p>9 services that they relied on were accounting</p> <p>10 and tax primarily.</p> <p>11 Q. Did Mark Patrick do work for HCRE</p> <p>12 while he was employed by Highland?</p> <p>13 A. Boy, I don't know. I imagine</p> <p>14 probably tax-related stuff.</p> <p>15 Q. Did HCRE ever pay Highland anything</p> <p>16 for the services that it received?</p> <p>17 MS. DEITSCH-PEREZ: Are you talking</p> <p>18 about cash or --</p> <p>19 MR. MORRIS: Please, please, please.</p> <p>20 -- I'm trying to be really patient,</p> <p>21 Deborah, but please no speaking objections.</p> <p>22 Mr. Dondero is a very sophisticated man.</p> <p>23 We have done this many times</p> <p>24 together. He will ask me if he doesn't</p> <p>25 understand the question. And if you would</p>

<p style="text-align: right;">Page 384</p> <p>1 DONDERO - 10/29/21</p> <p>2 like to object, by all means. I don't have</p> <p>3 a problem with that. I don't.</p> <p>4 MS. DEITSCH-PEREZ: But I asked --</p> <p>5 (speaking simultaneously.)</p> <p>6 Q. Mr. Dondero -- Mr. Dondero --</p> <p>7 Mr. Dondero, did HCRE ever pay anything to</p> <p>8 Highland for services rendered?</p> <p>9 MS. DEITSCH-PEREZ: Asked and</p> <p>10 answered.</p> <p>11 A. Yeah, that is what I was going to</p> <p>12 say. Same answer. You know, not -- not a</p> <p>13 formal cash remuneration, but, you know, a --</p> <p>14 which wouldn't have been much anyway. But --</p> <p>15 but more in terms of track record and presence</p> <p>16 in the market that then Highland or NexPoint</p> <p>17 could use to further its business.</p> <p>18 Q. Are you saying that -- that all of</p> <p>19 the entities were working kind of as a unified</p> <p>20 unit and got synergistic benefits from the work</p> <p>21 that it did?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't want to over generalize and</p> <p>25 say yes to that, but -- but there were</p>	<p style="text-align: right;">Page 385</p> <p>1 DONDERO - 10/29/21</p> <p>2 definitely -- you know, when I use the DAF</p> <p>3 example, you know, we would have never got the</p> <p>4 Harvard vest as an investor if it wasn't for</p> <p>5 the track record that the DAF had in CLO</p> <p>6 equity.</p> <p>7 I think there is business that</p> <p>8 NexPoint got in the real estate space</p> <p>9 benefiting from the HCRE performance. So I do</p> <p>10 believe there was specific definable benefit</p> <p>11 gained for the modest amount of cost of</p> <p>12 services provided.</p> <p>13 Q. And you --</p> <p>14 A. There wasn't specific remuneration.</p> <p>15 Q. And you controlled all of these</p> <p>16 entities; right?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. Well, the DAF is independent and</p> <p>20 separate, but the -- the HCRE-type entity, yes.</p> <p>21 Q. And did you decide that HCRE and</p> <p>22 HCMS and the DAF wouldn't be required to pay</p> <p>23 for services rendered to Highland?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p style="text-align: right;">Page 386</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. My recollection on the services and</p> <p>3 the HCRE is that the dollar value of the</p> <p>4 services provided was -- was small and nominal.</p> <p>5 With regard to the DAF, it was more</p> <p>6 complicated. There is rules -- there is</p> <p>7 charging rules in terms of fees and then there</p> <p>8 is also -- I wasn't the one that decided that.</p> <p>9 And there are other issues there other than</p> <p>10 just the value for services argument.</p> <p>11 And so I don't -- the short answer</p> <p>12 is, I don't know and I'm not involved in that,</p> <p>13 and I don't understand why sometimes there is</p> <p>14 one and sometimes there isn't one. Even to</p> <p>15 this day I don't know the answer to that.</p> <p>16 Q. Did -- did -- did you decide on</p> <p>17 behalf of Highland that Highland would provide</p> <p>18 services to DAF without receiving a stream of</p> <p>19 income in return?</p> <p>20 MS. DEITSCH-PEREZ: John, I think</p> <p>21 we're really far outside of either any of</p> <p>22 the 30(b)(6)s or the permissible topics for</p> <p>23 Mr. Dondero's personal deposition.</p> <p>24 So could you move on?</p> <p>25 MR. MORRIS: Okay. I will after I</p>	<p style="text-align: right;">Page 387</p> <p>1 DONDERO - 10/29/21</p> <p>2 get an answer to this question.</p> <p>3 A. Can you repeat the question?</p> <p>4 Q. Sure.</p> <p>5 Did you make the decision on behalf</p> <p>6 of Highland to provide services to the DAF</p> <p>7 without receiving a stream of income in return?</p> <p>8 MS. DEITSCH-PEREZ: Same objection.</p> <p>9 A. Yeah, I think I answered it with my</p> <p>10 rambling a few minutes ago, but the short</p> <p>11 answer is no.</p> <p>12 Q. Who made that decision? Who made</p> <p>13 that decision?</p> <p>14 MS. DEITSCH-PEREZ: Was that Mike's</p> <p>15 dog or yours?</p> <p>16 MR. MORRIS: That was my dog. I</p> <p>17 apologize.</p> <p>18 MS. DEITSCH-PEREZ: Okay.</p> <p>19 Q. Who made that decision, sir?</p> <p>20 A. I wasn't sure --</p> <p>21 MS. DEITSCH-PEREZ: Again -- again,</p> <p>22 John, this is well beyond the scope of the</p> <p>23 30(b)(6)s or even anything permissible for</p> <p>24 Mr. Dondero's personal. And, in fact, you</p> <p>25 said last time that is it, that was my last</p>

<p style="text-align: right;">Page 388</p> <p>1 DONDERO - 10/29/21</p> <p>2 question. So...</p> <p>3 MR. MORRIS: That is -- that is</p> <p>4 because I thought that he would say as the</p> <p>5 control person at the enterprise that he</p> <p>6 made the decision, but he said that he</p> <p>7 didn't.</p> <p>8 So I'm just asking one follow-up</p> <p>9 question. I just want to know -- Deborah,</p> <p>10 please.</p> <p>11 Q. I just want to know who made the</p> <p>12 decision on behalf of Highland to render</p> <p>13 services to the DAF without receiving a stream</p> <p>14 of income in return.</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form of the question for all of the reasons</p> <p>17 I stated before.</p> <p>18 A. And I don't know the answer.</p> <p>19 Q. Okay. So looking back at the</p> <p>20 document on the screen, we're going to ask --</p> <p>21 I'm going to ask these questions in your</p> <p>22 capacity as NexPoint's 30(b)(6) representative,</p> <p>23 okay?</p> <p>24 A. Sure.</p> <p>25 Q. And do you understand that the</p>	<p style="text-align: right;">Page 389</p> <p>1 DONDERO - 10/29/21</p> <p>2 document on the screen is NexPoint's answer to</p> <p>3 Highland's amended complaint?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review this document before?</p> <p>6 A. Just generally.</p> <p>7 Q. And did you authorize the filing of</p> <p>8 this document on behalf of NexPoint?</p> <p>9 A. Yes, yes.</p> <p>10 Q. Are you aware of anything in this</p> <p>11 document today that you believe to be</p> <p>12 inaccurate?</p> <p>13 A. I think the -- on the affirmative</p> <p>14 defenses on the -- do you remember on the prior</p> <p>15 one we had the -- I think it was called</p> <p>16 justification as the first one, but there</p> <p>17 wasn't a prepay in that one?</p> <p>18 Q. Correct.</p> <p>19 A. I think this one there were prepay,</p> <p>20 but the justification defense is missing from</p> <p>21 the front here. And I think that is -- I think</p> <p>22 if that were to continue -- I think that is</p> <p>23 partly due to different law firms and what was</p> <p>24 known at the time, et cetera, but I would say</p> <p>25 that is -- that is the -- that is the one thing</p>
<p style="text-align: right;">Page 390</p> <p>1 DONDERO - 10/29/21</p> <p>2 that jumps out at me between the two.</p> <p>3 MR. MORRIS: Okay. Can we go to</p> <p>4 Paragraph 80, and let's see if we can see</p> <p>5 what Mr. Dondero is talking about.</p> <p>6 Q. Okay. So I'm just going to focus on</p> <p>7 the first three paragraphs, 80, 81, and 82, and</p> <p>8 ask you whether -- whether you are aware of any</p> <p>9 facts that concern the affirmative defenses set</p> <p>10 forth in those paragraphs. And I think they're</p> <p>11 related, and that is why I'm asking you to do</p> <p>12 it all together, but we can do it one at a</p> <p>13 time, whatever you are comfortable with.</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form. I mean, other than the facts in</p> <p>16 those paragraphs?</p> <p>17 MR. MORRIS: You are doing it again,</p> <p>18 Deborah.</p> <p>19 MS. DEITSCH-PEREZ: It --</p> <p>20 MR. MORRIS: Please, please.</p> <p>21 MS. DEITSCH-PEREZ: John, when you</p> <p>22 ask questions -- I understand Mr. Dondero</p> <p>23 is sophisticated, but he's also not a</p> <p>24 lawyer, and when you ask questions that are</p> <p>25 misleading, I'm going to interject</p>	<p style="text-align: right;">Page 391</p> <p>1 DONDERO - 10/29/21</p> <p>2 something.</p> <p>3 MR. MORRIS: It is completely</p> <p>4 improper. He doesn't need to be a lawyer.</p> <p>5 He's a 30(b)(6) witness, and I'm asking</p> <p>6 such a simple question, what facts do you</p> <p>7 have that support the affirmative defense.</p> <p>8 A. Okay. Is it okay if I repeat some</p> <p>9 of them from the prior one?</p> <p>10 Q. Sure. Whatever you are comfortable</p> <p>11 with.</p> <p>12 A. The -- to the extent that -- to the</p> <p>13 extent that the notes were prepaid -- prepaid</p> <p>14 significantly, it is a real question on whether</p> <p>15 or not there could have been a breach at the</p> <p>16 end of the year, even if there wasn't a payment</p> <p>17 at the end of the year.</p> <p>18 There is no logical reason, nor</p> <p>19 would I have ever authorized or suggested no</p> <p>20 payment to put us on -- in default due to a de</p> <p>21 minimis amount of money, like a few hundred</p> <p>22 thousand dollars, even if I was highly annoyed</p> <p>23 with Seery, even if we knew that Seery and</p> <p>24 Highland had overcharged NexPoint by whatever</p> <p>25 it was, 14, 16 million bucks, I would not have</p>

<p style="text-align: right;">Page 392</p> <p>1 DONDERO - 10/29/21</p> <p>2 let a small amount cause a -- cause a breach.</p> <p>3 You know, the -- how would I -- how</p> <p>4 would I add to that now. The overpayment on</p> <p>5 the \$14 million, holding back additional shared</p> <p>6 services amount, made an inordinate amount of</p> <p>7 sense.</p> <p>8 There was supposed to be at that</p> <p>9 time -- there was another netting from Seery in</p> <p>10 terms of wanting to be fair and reasonable, you</p> <p>11 know, with employees and with the transition of</p> <p>12 the estate, et cetera, and everything was going</p> <p>13 to get trued up.</p> <p>14 So I do believe there was an</p> <p>15 expectation of a netting, et cetera, but</p> <p>16 overall, Highland should have paid it. It</p> <p>17 shouldn't have let it breach the cause, but at</p> <p>18 least when I found out about it and they knew I</p> <p>19 was annoyed. And I told them I didn't want it</p> <p>20 to be in default, they gave me the numbers and</p> <p>21 the amounts to cure it in their mind, and they</p> <p>22 accepted it.</p> <p>23 Now, I think they should have gone</p> <p>24 back and incorporated prepaids and said that no</p> <p>25 amounts were due because of the prepaids, et</p>	<p style="text-align: right;">Page 393</p> <p>1 DONDERO - 10/29/21</p> <p>2 cetera, but the calculation that they came up</p> <p>3 to get it in compliance in good standing was a</p> <p>4 million 4. And just like we relied on them to</p> <p>5 pay it and keep us out of default, we relied on</p> <p>6 them to set the amount to cure.</p> <p>7 But I guess I would make the</p> <p>8 argument that it shouldn't have been, but</p> <p>9 again, I didn't want to mince -- I didn't want</p> <p>10 to on small dollars make an argument that could</p> <p>11 get us in bigger trouble -- bigger trouble. So</p> <p>12 it was easier to -- to pay the million bucks</p> <p>13 than it was to argue that it wasn't due.</p> <p>14 Q. Did you at any time in your capacity</p> <p>15 as the person in control of NexPoint instruct</p> <p>16 anybody at Highland to make the payment that</p> <p>17 was due at the end of 2020?</p> <p>18 A. Not specifically to pay it or not</p> <p>19 specifically not to pay it. It was something,</p> <p>20 again, small and de minimis that I expected to</p> <p>21 be done in due course.</p> <p>22 MR. MORRIS: I move to strike.</p> <p>23 Q. It's a very simple question.</p> <p>24 Did you personally take any steps to</p> <p>25 ensure that NexPoint made the payment that was</p>
<p style="text-align: right;">Page 394</p> <p>1 DONDERO - 10/29/21</p> <p>2 due at the end of 2020?</p> <p>3 MS. DEITSCH-PEREZ: Asked and</p> <p>4 answered.</p> <p>5 A. Yes, I would like to repeat my same</p> <p>6 answer.</p> <p>7 Q. Did you tell anybody to make the</p> <p>8 payment on behalf of NexPoint at the end of</p> <p>9 2020?</p> <p>10 MS. DEITSCH-PEREZ: Asked and</p> <p>11 answered.</p> <p>12 A. I would like to give the same answer</p> <p>13 that you -- you -- you struck.</p> <p>14 Q. Can you just say yes or no, sir, did</p> <p>15 you tell anybody to make the payment at the end</p> <p>16 of 2020 on behalf of NexPoint?</p> <p>17 MS. DEITSCH-PEREZ: Asked and</p> <p>18 answered.</p> <p>19 A. I don't want to give anything beyond</p> <p>20 the answer that I gave.</p> <p>21 Q. Okay.</p> <p>22 A. I get myself in trouble because I</p> <p>23 paraphrase. I don't want to answer yes -- I</p> <p>24 don't think yes or no would be an appropriate</p> <p>25 answer. I want to stay with the answer that I</p>	<p style="text-align: right;">Page 395</p> <p>1 DONDERO - 10/29/21</p> <p>2 gave.</p> <p>3 Q. Okay. I'm going to say the word</p> <p>4 "Yankees," and every time I say the word</p> <p>5 "Yankees" today, everybody should know that</p> <p>6 that is the question that I'm going to bring to</p> <p>7 the Court on a motion to compel, okay?</p> <p>8 It's a very simple question. It's a</p> <p>9 very simple question. I will ask one more</p> <p>10 time, and if you don't want to answer, that is</p> <p>11 fine.</p> <p>12 MS. DEITSCH-PEREZ: What --</p> <p>13 Q. Mr. Dondero -- Mr. Dondero, in</p> <p>14 December of 2020, did you give anybody any</p> <p>15 instructions at Highland to make sure that</p> <p>16 NexPoint made the payment that was due at the</p> <p>17 end of the year?</p> <p>18 MS. DEITSCH-PEREZ: Asked and</p> <p>19 answered.</p> <p>20 A. I think that means I'm supposed to</p> <p>21 stick with the answer that I gave.</p> <p>22 MS. DEITSCH-PEREZ: You're on mute,</p> <p>23 John. John, you're on mute. John, you're</p> <p>24 on mute. John, we can't hear you.</p> <p>25 THE WITNESS: I do like it better</p>

<p style="text-align: right;">Page 396</p> <p>1 DONDERO - 10/29/21</p> <p>2 when he yells at me on mute.</p> <p>3 MS. DEITSCH-PEREZ: John, we can't</p> <p>4 hear you.</p> <p>5 COURT REPORTER: We can't hear you,</p> <p>6 John.</p> <p>7 MR. MORRIS: You can't hear me?</p> <p>8 COURT REPORTER: Now we can.</p> <p>9 MS. DEITSCH-PEREZ: Now we can hear</p> <p>10 you, but we couldn't hear you. It looks</p> <p>11 like you were yelling, but we couldn't hear</p> <p>12 you.</p> <p>13 A. I do like it better when you yell at</p> <p>14 me on mute.</p> <p>15 Q. I try not to yell at you, and I hope</p> <p>16 that you haven't perceived this -- we do have a</p> <p>17 videotape this time. So to the extent that</p> <p>18 anybody perceives your comment as suggesting</p> <p>19 that I have yelled at you, I would invite them</p> <p>20 to look at the video.</p> <p>21 MS. DEITSCH-PEREZ: Well, we said we</p> <p>22 couldn't hear you, but your animation</p> <p>23 looked like that.</p> <p>24 Q. Sir, can you identify any person in</p> <p>25 the world acting on behalf of NexPoint who</p>	<p style="text-align: right;">Page 397</p> <p>1 DONDERO - 10/29/21</p> <p>2 instructed Highland to make the payment that</p> <p>3 was due on the NexPoint term note in December</p> <p>4 of 2020?</p> <p>5 MS. DEITSCH-PEREZ: John, that is</p> <p>6 the fifth or sixth time.</p> <p>7 MR. MORRIS: It is a completely</p> <p>8 different question. Please.</p> <p>9 MS. DEITSCH-PEREZ: Could you read</p> <p>10 it back, if I was mistaken. So read it</p> <p>11 back.</p> <p>12 (Record read.)</p> <p>13 A. NexPoint did not have the accounting</p> <p>14 staff or the systems or the records or the</p> <p>15 knowledge to have any person in the world at</p> <p>16 NexPoint to give that instruction.</p> <p>17 So the long answer -- the short</p> <p>18 answer is no, but the long answer is we had</p> <p>19 been kept away from our books and records. I</p> <p>20 think we largely still don't have them, and</p> <p>21 there would -- I am not aware of anybody who --</p> <p>22 anybody in the world at NexPoint who made that</p> <p>23 request.</p> <p>24 Q. Frank Waterhouse was the treasurer</p> <p>25 of NexPoint in December of 2020; is that</p>
<p style="text-align: right;">Page 398</p> <p>1 DONDERO - 10/29/21</p> <p>2 correct?</p> <p>3 A. I think he was very much viewing his</p> <p>4 responsibilities as Highland related and as an</p> <p>5 employee of Highland. But yes, based on that</p> <p>6 incumbency certificate, but that is your --</p> <p>7 your question to ask Frank if he was taking</p> <p>8 that seriously, but NexPoint was relying on</p> <p>9 Highland.</p> <p>10 Q. Do you have any other facts that you</p> <p>11 are aware of that relate to the affirmative</p> <p>12 defenses set forth in Paragraphs 81 through 82?</p> <p>13 A. I think I -- I think I've said them</p> <p>14 all.</p> <p>15 MR. MORRIS: Okay. It is 2:13</p> <p>16 Eastern time. Let's just take a short</p> <p>17 half-hour lunch break, and let's return at</p> <p>18 2:45, or 1:45 Central.</p> <p>19 VIDEOGRAPHER: Off the record, 1:13.</p> <p>20 (Recess taken 1:13 p.m. to 1:48 p.m.)</p> <p>21 VIDEOGRAPHER: Back on the record,</p> <p>22 1:48.</p> <p>23 Q. Mr. Dondero, are you comfortable?</p> <p>24 A. Yes.</p> <p>25 Q. And are you able to proceed?</p>	<p style="text-align: right;">Page 399</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you speak with anybody</p> <p>4 during the break about the substance of this</p> <p>5 deposition?</p> <p>6 A. No.</p> <p>7 Q. You entered into certain oral</p> <p>8 agreements with your sister concerning some of</p> <p>9 the notes at issue in these lawsuits.</p> <p>10 Do I have that right?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. Can you rephrase or repeat, please?</p> <p>14 Q. Sure.</p> <p>15 You entered into certain oral</p> <p>16 agreements with your sister concerning certain</p> <p>17 of the notes at issue in these lawsuits.</p> <p>18 Do I have that right?</p> <p>19 MS. DEITSCH-PEREZ: Object --</p> <p>20 A. Yes.</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form. And I'm going to object -- object</p> <p>23 every time because it just -- just so it is</p> <p>24 on the record because you are saying "your</p> <p>25 sister" without giving her -- her capacity.</p>



<p style="text-align: right;">Page 400</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Okay.</p> <p>3 MS. DEITSCH-PEREZ: But I don't want</p> <p>4 to disrupt the deposition, so I'm just</p> <p>5 telling you why I'm doing it and he can</p> <p>6 continue to answer thereafter. That is why</p> <p>7 I'm doing it.</p> <p>8 Q. Okay. Can we -- can we agree,</p> <p>9 Mr. Dondero, when I refer to your sister in the</p> <p>10 context of oral agreements that she was</p> <p>11 entering into those agreements with you as a</p> <p>12 representative of Dugaboy -- as Dugaboy</p> <p>13 trustee, as representative for a majority of</p> <p>14 the class A interest holders of Highland?</p> <p>15 A. Yeah. How about just to make it</p> <p>16 simple let's just call it the Dugaboy trustee,</p> <p>17 and everybody will know that it is my sister</p> <p>18 and everybody will know that it is the majority</p> <p>19 of the class A unit holders.</p> <p>20 Q. Okay. Okay. I appreciate that and</p> <p>21 I will do just that.</p> <p>22 You entered into certain oral</p> <p>23 agreements with the Dugaboy trustee concerning</p> <p>24 certain of the notes at issue in these</p> <p>25 lawsuits; is that right?</p>	<p style="text-align: right;">Page 401</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's discuss the purpose of</p> <p>4 those oral agreements.</p> <p>5 MR. MORRIS: Can we put back up on</p> <p>6 the screen Mr. Dondero's answer.</p> <p>7 Q. And while we're doing that,</p> <p>8 Mr. Dondero, can you confirm that your sister</p> <p>9 is the only trustee of the Dugaboy Investment</p> <p>10 Trust?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. For what period of time are we</p> <p>14 talking about?</p> <p>15 Q. During the period of time at which</p> <p>16 you entered into the oral agreements with the</p> <p>17 Dugaboy trustee.</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. Yeah, I believe she has been the</p> <p>21 trustee since 2015 and remains so today. I</p> <p>22 don't have an awareness of -- I don't have an</p> <p>23 awareness of another functional trustee.</p> <p>24 So some of these -- sometimes</p> <p>25 complex trusts have other layers that are</p>
<p style="text-align: right;">Page 402</p> <p>1 DONDERO - 10/29/21</p> <p>2 called trustees but they're not trustees per</p> <p>3 se. But I think I'm over thinking it. But I'm</p> <p>4 not aware of anybody I've interacted with,</p> <p>5 other than her, as trustee with regard to the</p> <p>6 notes.</p> <p>7 Q. Okay. So up on the screen we</p> <p>8 have -- no, that is the wrong document.</p> <p>9 MR. MORRIS: We need Exhibit 31,</p> <p>10 please.</p> <p>11 Yeah, there you go. That one.</p> <p>12 Perfect. Okay.</p> <p>13 MS. DEITSCH-PEREZ: 31 is not -- oh,</p> <p>14 is that the '03 answer?</p> <p>15 MR. MORRIS: Correct, that is</p> <p>16 Mr. Dondero's answer.</p> <p>17 Q. Do you see that, sir, on the screen?</p> <p>18 MS. DEITSCH-PEREZ: Hang on. I'm</p> <p>19 going to get it again.</p> <p>20 Okay. If you want a hard copy, I</p> <p>21 have one here but he's got it up.</p> <p>22 Q. Do you see on the screen,</p> <p>23 Mr. Dondero, marked as Exhibit 31 is your</p> <p>24 answer to Highland's amended complaint?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 403</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we go to</p> <p>4 Paragraph 82, please.</p> <p>5 Q. Is it your understanding that</p> <p>6 Paragraph 82 describes, among other things, in</p> <p>7 general terms your oral agreements with --</p> <p>8 between you and the Dugaboy trustee?</p> <p>9 A. Yes.</p> <p>10 Q. Is it your position that the oral</p> <p>11 agreements that you entered into with your</p> <p>12 sister -- withdrawn.</p> <p>13 Is it your contention that the oral</p> <p>14 agreements you entered into with the Dugaboy</p> <p>15 trustee applied to each of the notes that were</p> <p>16 executed by NexPoint and that are the subject</p> <p>17 of Highland's lawsuit against NexPoint?</p> <p>18 A. Yes.</p> <p>19 Q. Is it your contention that the oral</p> <p>20 agreements that were entered into with the</p> <p>21 Dugaboy trustee apply to the notes executed by</p> <p>22 HCMS that are the subject of Highland's lawsuit</p> <p>23 against HCMS?</p> <p>24 A. Yes.</p> <p>25 Q. Is it your contention that the oral</p>



<p style="text-align: right;">Page 404</p> <p>1 DONDERO - 10/29/21</p> <p>2 agreements between you and the Dugaboy trustee</p> <p>3 apply to the notes that were executed by HCRE</p> <p>4 that are the subject of the lawsuit that</p> <p>5 Highland has commenced against HCRE?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do I understand correctly</p> <p>8 that your oral agreements with your sister do</p> <p>9 not apply to the notes that were executed on</p> <p>10 behalf of HCMFA that are the subject of the</p> <p>11 lawsuit that Highland commenced against HCMFA?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. I appreciate that.</p> <p>14 Do you see in this paragraph towards</p> <p>15 the middle it says, quote: The purpose of this</p> <p>16 agreement was to provide compensation to</p> <p>17 defendant, James Dondero, who was otherwise</p> <p>18 underpaid, compared to reasonable compensation</p> <p>19 levels in the industry through the use of</p> <p>20 forgivable loans, a practice that was standard</p> <p>21 at HCMLP in the industry.</p> <p>22 Have I read that correctly?</p> <p>23 A. Yes.</p> <p>24 Q. Is that the purpose of the agreement</p> <p>25 that you entered into with your sister --</p>	<p style="text-align: right;">Page 405</p> <p>1 DONDERO - 10/29/21</p> <p>2 withdrawn.</p> <p>3 Is that the purpose of the agreement</p> <p>4 that you entered into with the Dugaboy trustee</p> <p>5 concerning the notes at issue in the lawsuits</p> <p>6 that were commenced against you personally?</p> <p>7 Withdrawn. That was a bad question.</p> <p>8 Does that purpose apply only to the</p> <p>9 notes that you executed or does it apply to the</p> <p>10 corporate notes as well?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 Other than HCMFA?</p> <p>14 MR. MORRIS: Correct. I think we've</p> <p>15 established the scope of the agreements.</p> <p>16 A. To give a complete answer, from my</p> <p>17 perspective it is about 50 million of notes</p> <p>18 between -- current balance between NexPoint,</p> <p>19 Services, myself, and HCRE.</p> <p>20 Q. And HCMS; right?</p> <p>21 A. Yes, Services, Highland Capital</p> <p>22 Management, yes.</p> <p>23 Q. Okay. So I just want to know, that</p> <p>24 sentence there concerning the purpose was</p> <p>25 omitted from the answers of NexPoint, HCMS,</p>
<p style="text-align: right;">Page 406</p> <p>1 DONDERO - 10/29/21</p> <p>2 HCRE.</p> <p>3 And I'm happy to walk you through to</p> <p>4 show you. And I just want to know in your</p> <p>5 capacity as a 30(b)(6) witness for those</p> <p>6 entities, if you know why that statement of</p> <p>7 purpose was omitted.</p> <p>8 A. Well, we talked about it earlier. I</p> <p>9 think there is some cleanup. There has been</p> <p>10 multiple lawyers involved. We didn't know</p> <p>11 which loans were prepaid, which loans weren't.</p> <p>12 But, you know, I don't know why it was omitted</p> <p>13 but it applies to all of them.</p> <p>14 MS. DEITSCH-PEREZ: I think that is</p> <p>15 the first time that I've noticed that. So,</p> <p>16 John, I'm going to take a mea culpa. I</p> <p>17 think that is a cut-and-paste error.</p> <p>18 MR. MORRIS: All right. Well, I</p> <p>19 will -- I will just point out that the</p> <p>20 affirmative defense concerning the oral</p> <p>21 agreements is the exact same in all four</p> <p>22 answers, except for the omission of the</p> <p>23 statement of purpose for the three</p> <p>24 corporate entities.</p> <p>25 Q. And so, Mr. Dondero, is it fair to</p>	<p style="text-align: right;">Page 407</p> <p>1 DONDERO - 10/29/21</p> <p>2 say that you don't know why that statement of</p> <p>3 purpose was omitted from the corporate</p> <p>4 entities' answers?</p> <p>5 A. Yeah, I don't know why it is omitted</p> <p>6 or why the complaints aren't consistent with</p> <p>7 that regard.</p> <p>8 Q. Okay. But it is your -- it is your</p> <p>9 position as the purpose -- as one of the people</p> <p>10 who entered into this oral agreement that the</p> <p>11 purpose for the -- for the condition subsequent</p> <p>12 agreement is the same as for the corporate</p> <p>13 entities as it is for you, as stated in this</p> <p>14 paragraph; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. We talked a little bit about</p> <p>17 the NexPoint term note.</p> <p>18 Do you remember that?</p> <p>19 A. Yes.</p> <p>20 Q. And do you recall that in its</p> <p>21 original form the NexPoint term note was for a</p> <p>22 principal amount of approximately \$30 million?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall that the NexPoint</p> <p>25 term note was a rollover of the outstanding</p>

<p style="text-align: right;">Page 408</p> <p>1 DONDERO - 10/29/21</p> <p>2 principal and interest then due on certain</p> <p>3 promissory notes that had previously been given</p> <p>4 by NexPoint to Highland?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 MR. MORRIS: Can we put up, please,</p> <p>8 Exhibit Number 2, which I believe is the</p> <p>9 complaint against NexPoint.</p> <p>10 (Exhibit 2 marked.)</p> <p>11 MR. MORRIS: And if we can go to</p> <p>12 Exhibit Number 1 of Deposition Exhibit</p> <p>13 Number 2.</p> <p>14 Q. Okay. And do you see -- I'm sorry,</p> <p>15 sir, do you see that Exhibit Number 1 to the</p> <p>16 complaint is a promissory note dated May 31st,</p> <p>17 2017 in the approximate amount of</p> <p>18 \$30.75 million?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And is that your signature on</p> <p>21 page 2?</p> <p>22 A. Looks like it.</p> <p>23 Q. Okay. And did you sign this note on</p> <p>24 behalf of NexPoint on or around May 31st, 2017?</p> <p>25 A. I assume so.</p>	<p style="text-align: right;">Page 409</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Do you know if you read the note</p> <p>3 before you signed it?</p> <p>4 A. Not likely.</p> <p>5 Q. Do you recall whether there was</p> <p>6 anything about the note that you didn't</p> <p>7 understand before you signed it on behalf of</p> <p>8 NexPoint?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. Yeah, I'm not -- I doubt I read it,</p> <p>12 so I don't remember objecting to anything.</p> <p>13 Q. Okay. Looking at Paragraph 2.1, am</p> <p>14 I characterizing that section fairly when I say</p> <p>15 that the borrower was required to make an</p> <p>16 annual installment payment at the end of each</p> <p>17 calendar year?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. I see that paragraph, yes.</p> <p>21 Q. Okay. And did you understand when</p> <p>22 you signed it that an annual installment</p> <p>23 payment would be due at the end of each year by</p> <p>24 NexPoint?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 410</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. I never read it that closely.</p> <p>4 Q. So as the control person of</p> <p>5 NexPoint, is it fair to say then that you don't</p> <p>6 recall having an understanding when you signed</p> <p>7 this note that NexPoint would be required to</p> <p>8 make annual payments at the end of each year?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I didn't have knowledge of the</p> <p>12 specifics, and again, I would describe those</p> <p>13 specifics as de minimis.</p> <p>14 Q. Okay. Do you see -- do you have any</p> <p>15 idea who drafted this note?</p> <p>16 A. It would have come from accounting.</p> <p>17 I think they have boilerplate -- I don't know</p> <p>18 if they work with legal at all. I have no</p> <p>19 idea, but it would have come through</p> <p>20 accounting.</p> <p>21 Q. Do you recall that all three of the</p> <p>22 term notes at issue were signed on the same</p> <p>23 day, May 31st, 2017?</p> <p>24 A. That doesn't surprise me. I think</p> <p>25 there was an accounting reason, if I remember</p>	<p style="text-align: right;">Page 411</p> <p>1 DONDERO - 10/29/21</p> <p>2 correctly. I think it had something to do with</p> <p>3 either the audit or the financials or if we had</p> <p>4 a credit facility at the time. I think that is</p> <p>5 probably why, but I don't remember exactly.</p> <p>6 Q. Do you have any other recollection</p> <p>7 as to why all three notes were executed at the</p> <p>8 end of May 2017?</p> <p>9 A. Again, I believe they're -- the --</p> <p>10 aggregating or solidifying them into one</p> <p>11 defined note I think was required by the</p> <p>12 auditors or the -- the accounting department as</p> <p>13 best practices. I don't think -- it wasn't a</p> <p>14 regulatory reason and it wasn't a compliance</p> <p>15 reason. I believe it was just an accounting or</p> <p>16 an audit reason.</p> <p>17 Q. Did you ever make sure on behalf of</p> <p>18 NexPoint that the terms of the promissory note</p> <p>19 were fair and reasonable?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 A. Yeah, I don't remember ever</p> <p>23 negotiating or reading it that closely. And</p> <p>24 again, I think the view from all concerned is</p> <p>25 that it was relatively de minimis from the</p>

<p style="text-align: right;">Page 412</p> <p>1 DONDERO - 10/29/21</p> <p>2 balance sheet at Highland then or now and/or de</p> <p>3 minimis relevant to NexPoint's value.</p> <p>4 Q. It is a \$30 million note. Do I have</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And it was material enough to</p> <p>8 be included in Highland's financial statements;</p> <p>9 is that correct?</p> <p>10 A. Anything material or not as part of</p> <p>11 doing proper audited financials needs to be</p> <p>12 properly included.</p> <p>13 Q. Okay. And you know, because you</p> <p>14 signed the management representation letter,</p> <p>15 that this note was specifically disclosed to</p> <p>16 PwC and included in both Highland's and</p> <p>17 NexPoint's audited financial statements;</p> <p>18 correct?</p> <p>19 A. I would -- I would have been shocked</p> <p>20 if it wasn't, if it is an asset and a liability</p> <p>21 respectively of the companies.</p> <p>22 Q. Okay. Do you see the section on</p> <p>23 acceleration upon default, Paragraph 4?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen that section</p>	<p style="text-align: right;">Page 413</p> <p>1 DONDERO - 10/29/21</p> <p>2 before?</p> <p>3 A. No.</p> <p>4 Q. Do you think a prudent executive</p> <p>5 signing a \$30 million note should take the time</p> <p>6 to read the terms and conditions of the note?</p> <p>7 A. Not necessarily.</p> <p>8 Q. Under what circumstances do you</p> <p>9 think that an executive shouldn't take the time</p> <p>10 to read the terms and conditions of a</p> <p>11 \$30 million promissory note?</p> <p>12 A. When it is between affiliates,</p> <p>13 between friendly affiliates with no even</p> <p>14 inkling that bankruptcy or the parties could be</p> <p>15 at odds create a note, when it is a soft note</p> <p>16 with limited collateral and limited other</p> <p>17 protections. And then the servicing or value</p> <p>18 of the note is de minimis relative to the</p> <p>19 balance sheets of each entity I think is a good</p> <p>20 reason or logical reason for the executives on</p> <p>21 both sides not to spend much time focusing on</p> <p>22 it.</p> <p>23 Q. All right. So you thought it was</p> <p>24 reasonable not to read this particular note for</p> <p>25 the reasons you just gave.</p>
<p style="text-align: right;">Page 414</p> <p>1 DONDERO - 10/29/21</p> <p>2 Do I have that right?</p> <p>3 A. Right.</p> <p>4 MR. MORRIS: Okay. Can we go to the</p> <p>5 next page, please.</p> <p>6 Q. Do you see Paragraph 5? There is a</p> <p>7 paragraph entitled Waiver.</p> <p>8 A. Yes.</p> <p>9 Q. And I will read it out loud: Maker</p> <p>10 hereby waives grace, demand, presentment for</p> <p>11 payment, notice of non-payment, protest, notice</p> <p>12 of protest, notice of intent to accelerate,</p> <p>13 notice of acceleration, and all other notices</p> <p>14 of any kind hereunder.</p> <p>15 Have I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know that that paragraph is</p> <p>18 included in every single note that you signed</p> <p>19 that is part of the litigation that we're here</p> <p>20 to talk about today?</p> <p>21 A. You have to -- you have to define</p> <p>22 when. You know, like today I know that it</p> <p>23 is -- it is in those notes.</p> <p>24 At the end of '20, Seery and DSI</p> <p>25 were withholding all notes, all information,</p>	<p style="text-align: right;">Page 415</p> <p>1 DONDERO - 10/29/21</p> <p>2 anything regarding the company from any of the</p> <p>3 other subsidiaries, and Frank was administering</p> <p>4 the notes on behalf of both the related parties</p> <p>5 and Highland.</p> <p>6 So at the time -- at the time I</p> <p>7 would have -- I would have never known that at</p> <p>8 the end of 2020. And it is crazy to think I</p> <p>9 would have remembered a clause in a soft note</p> <p>10 from three years earlier.</p> <p>11 Q. Okay. Is it fair to say that -- do</p> <p>12 you understand today that that provision is</p> <p>13 included in every note that you signed?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. You're saying it, so I believe you.</p> <p>17 I'm not asking you to go show me all the other</p> <p>18 notes, but --</p> <p>19 Q. Thank you.</p> <p>20 A. -- I'm assuming it is in all the</p> <p>21 other notes. I will take your word for it.</p> <p>22 Q. And is it fair to say that at the</p> <p>23 time you signed these notes you didn't take the</p> <p>24 time to read that particular provision?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p style="text-align: right;">Page 416</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. That is correct. A lot of it is</p> <p>4 boilerplate. And, again, treasury or</p> <p>5 accounting would have put in what was necessary</p> <p>6 for regulatory, tax, audit purposes. Maybe the</p> <p>7 auditors put that in. I have no idea.</p> <p>8 But the content and the bullet</p> <p>9 points here, the nine paragraphs on a soft note</p> <p>10 would have been put in by other people and</p> <p>11 administered by other people other than me.</p> <p>12 Q. What is a soft note?</p> <p>13 A. You know, like a secured -- I mean,</p> <p>14 a note that isn't a hard note, like a note that</p> <p>15 isn't secured, deed in lieu, UCC filed,</p> <p>16 guaranteed, you know, performance and bad boy</p> <p>17 clauses and all of that other stuff.</p> <p>18 A soft note is an unsecured loan</p> <p>19 that has basic terms to it, but it is likely</p> <p>20 subject to renegotiation over time.</p> <p>21 Q. Were any of the notes that you</p> <p>22 signed subject to negotiation?</p> <p>23 A. Well, I'm saying by definition that</p> <p>24 is what a soft note is.</p> <p>25 Q. One that -- that is not subject to</p>	<p style="text-align: right;">Page 417</p> <p>1 DONDERO - 10/29/21</p> <p>2 the negotiation -- to negotiations?</p> <p>3 A. No, one that is over time subject to</p> <p>4 negotiation or modification.</p> <p>5 Q. Okay.</p> <p>6 A. Because there is -- there is</p> <p>7 limited -- there is limited, team collateral,</p> <p>8 guarantee, bad boy features in -- in a soft</p> <p>9 note.</p> <p>10 Q. Okay. Perhaps my question wasn't</p> <p>11 clear.</p> <p>12 Did the notes that you signed -- did</p> <p>13 you negotiate them with anybody, the terms of</p> <p>14 each note?</p> <p>15 A. No.</p> <p>16 Q. Okay. Did you personally decide on</p> <p>17 the terms of each note?</p> <p>18 A. No. Again, they were two highly</p> <p>19 solvent, highly well-capitalized subsidiaries,</p> <p>20 and the amount of the notes was de minimis and</p> <p>21 friendly, and they were soft notes administered</p> <p>22 by a centralized treasury shared services</p> <p>23 department.</p> <p>24</p> <p>25 They were the ones deciding what it</p>
<p style="text-align: right;">Page 418</p> <p>1 DONDERO - 10/29/21</p> <p>2 took to be compliant from an accounting</p> <p>3 regulatory-wise standpoint, but wasn't -- they</p> <p>4 were trying to come up with a balance note,</p> <p>5 which I think this is, such that it wouldn't</p> <p>6 have to be negotiated or haggled by any of the</p> <p>7 parties.</p> <p>8 And there is no evidence of any of</p> <p>9 the notes ever being haggled or ever being</p> <p>10 negotiated.</p> <p>11 Q. Okay. I appreciate that.</p> <p>12 At the time you signed each of the</p> <p>13 notes on behalf of the obligors, did the</p> <p>14 obligors have an intention at the time you put</p> <p>15 your signature on the page of repaying the</p> <p>16 notes in accordance with their terms?</p> <p>17 A. Yes. They're all -- soft note</p> <p>18 doesn't mean it's not a bona fide note. They</p> <p>19 were all intended to be bona fide notes, and</p> <p>20 they all are bona fide notes that were intended</p> <p>21 to be paid and for the -- virtually most part,</p> <p>22 were always paid or prepaid and, you know, paid</p> <p>23 in accordance.</p> <p>24 Q. Do you see to the right there is a</p> <p>25 list of prior notes?</p>	<p style="text-align: right;">Page 419</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. And is it your understanding that</p> <p>4 this note substituted and superseded the</p> <p>5 promissory notes that are listed on Exhibit A</p> <p>6 on the page there?</p> <p>7 A. Yeah. I mean, effectively pay those</p> <p>8 off and reestablish an aggregate note.</p> <p>9 Q. Right. And Exhibit A actually set</p> <p>10 forth the outstanding principal and interest</p> <p>11 that NexPoint owed Highland under the prior</p> <p>12 notes as defined there as of May 31st, 2017;</p> <p>13 right?</p> <p>14 A. Yeah, that is what it looks like.</p> <p>15 Q. Okay. And -- and so the initial</p> <p>16 principal amount of the prior notes was what is</p> <p>17 stated there, approximately \$27.675 million?</p> <p>18 A. Right.</p> <p>19 Q. Okay. You wouldn't have signed this</p> <p>20 note on behalf of NexPoint if you didn't</p> <p>21 believe at the time you signed it that NexPoint</p> <p>22 owed Highland that amount of money; correct?</p> <p>23 A. Yeah, it is a bona fide note,</p> <p>24 consistent with my testimony.</p> <p>25 Q. Okay. Do you know why NexPoint</p>

<p style="text-align: right;">Page 420</p> <p>1 DONDERO - 10/29/21</p> <p>2 borrowed the money from Highland at the times</p> <p>3 and in the amounts listed on Exhibit A?</p> <p>4 A. No.</p> <p>5 Q. Did you authorize NexPoint to borrow</p> <p>6 the money that is reflected in the prior note</p> <p>7 set forth on Exhibit A?</p> <p>8 A. I don't know. Probably some of</p> <p>9 them, yes.</p> <p>10 Q. Okay. And you have no recollection</p> <p>11 at all as to why NexPoint borrowed over</p> <p>12 \$27 million from Highland in the 12-month</p> <p>13 period from August 2014 to July 2015?</p> <p>14 A. Not without being refreshed.</p> <p>15 Q. Okay. Do you have any knowledge as</p> <p>16 to what NexPoint did with the proceeds from</p> <p>17 these loans?</p> <p>18 A. Not without being refreshed.</p> <p>19 Q. Okay. And you contend that this</p> <p>20 note is subject to -- subject to one of your</p> <p>21 oral agreements with the Dugaboy trustee;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Who decided to include this</p> <p>25 particular note in your agreement with the</p>	<p style="text-align: right;">Page 421</p> <p>1 DONDERO - 10/29/21</p> <p>2 Dugaboy trustee?</p> <p>3 A. Me, myself.</p> <p>4 Q. Okay. What was the purpose of</p> <p>5 including this note in your agreement with the</p> <p>6 Dugaboy trustee?</p> <p>7 Was it to provide you with a</p> <p>8 compensation?</p> <p>9 A. Yeah. I mean, in fact, I think it</p> <p>10 was articulated in that big paragraph</p> <p>11 reasonably well that my cash compensation, I</p> <p>12 believe through any lens, people would look at</p> <p>13 it as de minimis from the standpoint of</p> <p>14 Highland as asset manager.</p> <p>15 I don't think it was more than a</p> <p>16 couple million bucks in a year and it went</p> <p>17 down, I think, in the '15 through '20 period.</p> <p>18 So I think it is common in private</p> <p>19 companies to loan money that is bona fide debt</p> <p>20 and then forgive it at different times to</p> <p>21 manage compensation and incentives to managers</p> <p>22 of private companies.</p> <p>23 This is a -- we're in -- we each</p> <p>24 have experts talking about it, but I think this</p> <p>25 is, you know, typical.</p>
<p style="text-align: right;">Page 422</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Can you identify any moment in the</p> <p>3 25 or 26 year history that you were president</p> <p>4 of Highland where Highland forgave an</p> <p>5 intercompany loan for the purpose of providing</p> <p>6 compensation to you or any other employee</p> <p>7 except for the agreements that are described in</p> <p>8 Paragraph 82 of your answer?</p> <p>9 A. Boy, I know we have masked it. I</p> <p>10 don't know if we -- it sounds like we may not</p> <p>11 have sent it to you, but we have done it for a</p> <p>12 dozen employees over the years in -- in fairly</p> <p>13 significant amount --</p> <p>14 Q. I'm going to interrupt you, sir,</p> <p>15 because it's not responsive to my question. I</p> <p>16 apologize for that. I'm just focusing on</p> <p>17 intercompany loans.</p> <p>18 Can you identify any loan in the 25</p> <p>19 or 26 years that you were president, an</p> <p>20 intercompany loan where -- where Highland was</p> <p>21 the payee that was forgiven for purposes of</p> <p>22 giving you or any employee compensation, other</p> <p>23 than -- other than the agreements that you</p> <p>24 struck with the Dugaboy trustee?</p> <p>25 A. It is an odd question because I'm</p>	<p style="text-align: right;">Page 423</p> <p>1 DONDERO - 10/29/21</p> <p>2 the only one at the compensation level with the</p> <p>3 interrelated entities who could possibly get</p> <p>4 intercompany loans forgiven as part of the</p> <p>5 comp, but it --</p> <p>6 Q. Okay. So let me ask a cleaner --</p> <p>7 let me ask a cleaner question. I appreciate</p> <p>8 that clarification.</p> <p>9 Other than the agreements described</p> <p>10 in Paragraph 82, can you think of any other</p> <p>11 intercompany loan that was ever forgiven while</p> <p>12 you were president of Highland for the purpose</p> <p>13 of giving you compensation?</p> <p>14 A. I don't -- I don't know.</p> <p>15 Q. This is an important issue; right?</p> <p>16 The notion of a prior practice. It is your</p> <p>17 contention that there was a prior practice at</p> <p>18 Highland -- hold on one second. I apologize.</p> <p>19 Sorry about that. Somebody almost</p> <p>20 dropped an air conditioner out the window.</p> <p>21 MS. DEITSCH-PEREZ: That would not</p> <p>22 be good.</p> <p>23 MR. MORRIS: No.</p> <p>24 Q. All right. Apologies.</p> <p>25 MR. MORRIS: May I have the last</p>



<p style="text-align: right;">Page 424</p> <p>1 DONDERO - 10/29/21</p> <p>2 question read back?</p> <p>3 (Record read.)</p> <p>4 Q. I'm going to start all over here.</p> <p>5 Mr. Dondero, do you contend that</p> <p>6 there was a practice at Highland of forgiving</p> <p>7 loans; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall that we talked</p> <p>10 about that issue back in May?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And since -- since that time</p> <p>13 have you made any effort to gather any</p> <p>14 information that would demonstrate that there</p> <p>15 was a prior practice at Highland of forgiving</p> <p>16 loans?</p> <p>17 A. Yes.</p> <p>18 Q. And what efforts have you made?</p> <p>19 A. Like I said, we amassed a list, and</p> <p>20 not insignificant list and not insignificant</p> <p>21 amounts, proportionate to the people's</p> <p>22 compensation where it was a practice.</p> <p>23 You know, for some people for</p> <p>24 relocation, for some people for bonuses, for</p> <p>25 house purposes, for senior executives, senior</p>	<p style="text-align: right;">Page 425</p> <p>1 DONDERO - 10/29/21</p> <p>2 executives at the bank and board members at the</p> <p>3 bank in the seven-figure kind of numbers that</p> <p>4 were then subsequently forgiven.</p> <p>5 It is -- I know we amassed more than</p> <p>6 a dozen examples that were significant and</p> <p>7 material.</p> <p>8 MR. MORRIS: Deborah, I apologize.</p> <p>9 It is certainly possible I missed it, but I</p> <p>10 don't recall seeing any list or any</p> <p>11 documents of any kind that Mr. Dondero has</p> <p>12 described.</p> <p>13 Have they been produced?</p> <p>14 MS. DEITSCH-PEREZ: I think so. I</p> <p>15 will double-check, but I believe that</p> <p>16 they're listed --</p> <p>17 MR. MORRIS: I know there is a list</p> <p>18 of -- I apologize. I know there is a list</p> <p>19 of names in one of the discovery responses.</p> <p>20 But other than the list of names in the</p> <p>21 discovery response, I don't recall</p> <p>22 receiving any documents at all.</p> <p>23 MS. DEITSCH-PEREZ: No. And I think</p> <p>24 we asked you for the documents because we</p> <p>25 don't have access to the documents on</p>
<p style="text-align: right;">Page 426</p> <p>1 DONDERO - 10/29/21</p> <p>2 Highland's server. The only thing I can</p> <p>3 think of that we might owe you is there</p> <p>4 might be a few additional names to list in</p> <p>5 the interrogatory, and I will check whether</p> <p>6 that has been done.</p> <p>7 MR. MORRIS: Okay.</p> <p>8 Q. Mr. Dondero, you sign management</p> <p>9 representation letters in connection with</p> <p>10 Highland's audit each year; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Do you understand that you have an</p> <p>13 obligation when you sign the management</p> <p>14 representation to disclose to the auditor all</p> <p>15 agreements with affiliated entities and people</p> <p>16 that are deemed to be material?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. Generally, yes.</p> <p>20 Q. Okay. And is it your understanding</p> <p>21 that at least since 2008 Highland has disclosed</p> <p>22 to its auditors all agreements with affiliates</p> <p>23 that are material, as defined in the management</p> <p>24 representation letter?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 427</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And would that include any</p> <p>3 agreements to forgive loans that were deemed to</p> <p>4 be material amounts?</p> <p>5 A. No, because it is contingent in long</p> <p>6 term and speculative.</p> <p>7 Q. But at some point if it is forgiven</p> <p>8 would that be -- would that be an event that</p> <p>9 would be disclosed to the auditor?</p> <p>10 A. Sure.</p> <p>11 Q. Okay. So is it fair to say that all</p> <p>12 loans that were deemed to be material to the</p> <p>13 extent they were forgiven were disclosed to the</p> <p>14 auditors?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. But, yeah, the only caveat I would</p> <p>18 put on it is we have such limited information</p> <p>19 regarding Cornerstone and Trust Life, which is</p> <p>20 part of my agreement with the Dugaboy trustee</p> <p>21 or with the majority of class A holders.</p> <p>22 They could have been sold in</p> <p>23 secrecy, without disclosure to us, such that</p> <p>24 the notes are all forgiven at this point, but</p> <p>25 we -- we -- we may never know.</p>



<p style="text-align: right;">Page 428</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So you can't rely on anything that</p> <p>3 you don't know; is that fair?</p> <p>4 A. Yeah.</p> <p>5 MS. DEITSCH-PEREZ: Objection to</p> <p>6 form.</p> <p>7 A. Yeah, we can't rely on things we</p> <p>8 don't know and we can't rely on the debtor to</p> <p>9 be honorable.</p> <p>10 Q. Well, the debtor has produced to</p> <p>11 you, sir, every single audited financial</p> <p>12 statement without redaction since 2008. Are</p> <p>13 you aware of that?</p> <p>14 A. That is actually news to me because</p> <p>15 we were asking for them a couple of months ago.</p> <p>16 That must be -- that must be a new production.</p> <p>17 Q. No. Actually, it was produced to</p> <p>18 you way back in July. You are not aware of</p> <p>19 that?</p> <p>20 A. No, I'm looking --</p> <p>21 MS. DEITSCH-PEREZ: Hang on.</p> <p>22 A. I'm looking at Deborah. She'll --</p> <p>23 MS. DEITSCH-PEREZ: I will get the</p> <p>24 date.</p> <p>25 A. Yeah. I would love to see them.</p>	<p style="text-align: right;">Page 429</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So then -- so then it -- so is it</p> <p>3 fair to say, sir, that when you are describing</p> <p>4 this practice of forgiveness of loans, you are</p> <p>5 doing so without having reviewed any of the</p> <p>6 audited financial statements that Highland</p> <p>7 provided to your attorneys going back to 2008?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. What I'm saying, I guess, is that we</p> <p>11 haven't treated the loans as forgiven yet</p> <p>12 because if the condition precedent has been</p> <p>13 satisfied, we're not aware of it yet.</p> <p>14 Now, if there is something in those</p> <p>15 financial statements that will show that the</p> <p>16 condition precedent is satisfied, then we have</p> <p>17 a decision to make about the -- or figure out</p> <p>18 what the mechanism is for forgiving the loans.</p> <p>19 Q. Are you saying that there are loans</p> <p>20 out there subject to forgiveness where the</p> <p>21 maker is somebody other than you or an entity</p> <p>22 that you control?</p> <p>23 A. No, I'm just -- I'm talking about</p> <p>24 the 50 million of loans that we've been talking</p> <p>25 about.</p>
<p style="text-align: right;">Page 430</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. So -- so I just want to go</p> <p>3 back and focus on your assertion that there was</p> <p>4 this practice of loan forgiveness. I think you</p> <p>5 have agreed with me that any loan that was</p> <p>6 forgiven in a material amount would be</p> <p>7 contained within the Highland audited financial</p> <p>8 statements; right?</p> <p>9 A. I believe they -- material or not,</p> <p>10 they were all included in the Highland</p> <p>11 financials. Now, they might not have been</p> <p>12 specifically footnoted, you know.</p> <p>13 Like in other words, if we gave</p> <p>14 somebody half a million bucks to relocate and</p> <p>15 then forgave the loan, it might just be mixed</p> <p>16 with all other compensation in the line item.</p> <p>17 It might not have been listed separately</p> <p>18 because it would have been small relative to</p> <p>19 the overall financial statement.</p> <p>20 Q. But you're just speculating right</p> <p>21 now because, in fact, you haven't read the</p> <p>22 audited financial statements for the purpose of</p> <p>23 seeing whether or not there were loan -- loans</p> <p>24 that were forgiven and disclosed; right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p style="text-align: right;">Page 431</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. Well, what I'm saying, just to be</p> <p>4 clear, is I haven't looked at the presentation</p> <p>5 of forgiven loans in the historic financials</p> <p>6 because I was unaware that we had gotten</p> <p>7 historic financials, but I am testifying that</p> <p>8 we had amassed at least a dozen, 15 material</p> <p>9 examples of material loan forgiveness amounts</p> <p>10 to different executives.</p> <p>11 Q. All right. Do you have any</p> <p>12 documentation to support your assertion of the</p> <p>13 practice of forgiving loans at Highland?</p> <p>14 A. Again, we have very, very little</p> <p>15 access to anything, and we didn't take anything</p> <p>16 with us that we weren't supposed to take, so we</p> <p>17 don't have any of that documentation.</p> <p>18 At NexBank, one of the sister</p> <p>19 companies that we still have full control over</p> <p>20 our records, we could show seven-figure-plus</p> <p>21 loans to senior management and the entire board</p> <p>22 of directors and forgiveness thereof as an</p> <p>23 example, but that -- that is the only</p> <p>24 documentation that we would be able to present</p> <p>25 without having access to the records that you</p>

<p style="text-align: right;">Page 432</p> <p>1 DONDERO - 10/29/21</p> <p>2 guys are keeping from us.</p> <p>3 MR. MORRIS: I move to strike the</p> <p>4 last comment, and I take offense to it,</p> <p>5 sir. We're not withholding anything, okay.</p> <p>6 Q. Would the NexBank audited financial</p> <p>7 statements include a disclosure of the loans</p> <p>8 that you are describing?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So is it fair to say that if</p> <p>11 Highland forgave loans, it would be disclosed</p> <p>12 in its audited financial statements?</p> <p>13 MS. DEITSCH-PEREZ: Object, asked</p> <p>14 and answered.</p> <p>15 A. Well, just to be clear, these loans</p> <p>16 like the one up on the sheet, those were</p> <p>17 included in Highland's financials, those loans,</p> <p>18 just like the NexBank loans, when they were</p> <p>19 made to senior executives were included. But</p> <p>20 there wasn't a -- at NexBank there wasn't any</p> <p>21 kind of disclosure that said, these might be</p> <p>22 forgiven, or these are the terms that they</p> <p>23 would be forgiven under, just like there was no</p> <p>24 disclosure in the Highland financials that</p> <p>25 these are the terms that it might be forgiven</p>	<p style="text-align: right;">Page 433</p> <p>1 DONDERO - 10/29/21</p> <p>2 under, et cetera, et cetera.</p> <p>3 Q. It's certainly disclosed in the</p> <p>4 financials when it was forgiven. Will you --</p> <p>5 will you concede that point?</p> <p>6 A. Yes, sure.</p> <p>7 Q. Okay. Let's move on.</p> <p>8 Let's go to HCMS. Are you familiar</p> <p>9 with the notes at issue in the lawsuit that was</p> <p>10 commenced by Highland against HCMS?</p> <p>11 MS. DEITSCH-PEREZ: S or --</p> <p>12 A. S as in Services. Yes.</p> <p>13 MR. MORRIS: Okay. Can we please</p> <p>14 put up Exhibit 3.</p> <p>15 (Exhibit 3 marked.)</p> <p>16 MS. DEITSCH-PEREZ: Is that in the</p> <p>17 binder that you sent?</p> <p>18 MR. MORRIS: Yes, as Exhibit 3.</p> <p>19 MS. DEITSCH-PEREZ: Okay.</p> <p>20 MR. MORRIS: And if we could go to</p> <p>21 the Exhibits 1 through 4, okay.</p> <p>22 Q. Sir, we've put up on the screen</p> <p>23 Exhibit 1 to Exhibit 3, which is the complaint</p> <p>24 against HCMS. Do you see Exhibit 1 up on your</p> <p>25 screen?</p>
<p style="text-align: right;">Page 434</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yeah. This is the \$150,000</p> <p>3 promissory note; is that what that is?</p> <p>4 Q. Yes, sir.</p> <p>5 A. Okay. As long as I can see it on</p> <p>6 the screen, I don't need to find it in hard</p> <p>7 copy, do I?</p> <p>8 MS. DEITSCH-PEREZ: Yeah.</p> <p>9 MR. MORRIS: Can you scroll to the</p> <p>10 second page, PJ.</p> <p>11 Q. Is that your signature, sir?</p> <p>12 A. Close.</p> <p>13 Q. Are you aware that your signature is</p> <p>14 affixed to a \$150,000 promissory note that was</p> <p>15 made by HCMS to Highland Capital Management?</p> <p>16 A. Like I said --</p> <p>17 MS. DEITSCH-PEREZ: Objection, form.</p> <p>18 A. Like I said, it's close. I don't</p> <p>19 know if that is mine, but it's close.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that either you or somebody you authorized</p> <p>22 didn't sign this particular promissory note?</p> <p>23 A. Not specifically.</p> <p>24 MR. MORRIS: Okay. Can we go to the</p> <p>25 first page, please.</p>	<p style="text-align: right;">Page 435</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Did HCMS receive a loan from</p> <p>3 Highland in the amount of \$150,000 on March</p> <p>4 28th, 2018?</p> <p>5 A. I assume so.</p> <p>6 Q. Okay. You wouldn't have either</p> <p>7 signed or allowed your signature to be affixed</p> <p>8 to this document if you didn't understand that</p> <p>9 HCMS had received from Highland \$150,000;</p> <p>10 correct?</p> <p>11 A. This is one of the many things I</p> <p>12 would have signed on a given day.</p> <p>13 Q. Okay. And -- and are you aware that</p> <p>14 this note was given to Highland's auditors?</p> <p>15 A. It could. I'm not aware</p> <p>16 specifically, but it should be.</p> <p>17 Q. Okay. Do you have any recollection</p> <p>18 as to why HCMS obtained this loan from</p> <p>19 Highland?</p> <p>20 A. Unless it says it on these two</p> <p>21 pages, I have no idea.</p> <p>22 Q. Okay. Do you have any recollection</p> <p>23 as to what HCMS did with the proceeds of this</p> <p>24 loan?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 436</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. Let's just flip through the</p> <p>3 Exhibits 2, 3, and 4, if we could.</p> <p>4 Looking at Exhibit 2, is that your</p> <p>5 signature on Exhibit 2, sir?</p> <p>6 A. Again, it is close.</p> <p>7 Q. Okay. And do you have any reason to</p> <p>8 believe that that is either not your signature</p> <p>9 or that you did not authorize somebody to sign</p> <p>10 this on behalf of HCMS in June of 2018?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 MR. MORRIS: Can we go to Exhibit 3,</p> <p>14 please, and if we can go to the signature</p> <p>15 line.</p> <p>16 Q. Do you see that that is Frank</p> <p>17 Waterhouse?</p> <p>18 A. Yes.</p> <p>19 MR. MORRIS: Okay. And can we go to</p> <p>20 the page before that, the first page.</p> <p>21 Q. Frank Waterhouse was the treasurer</p> <p>22 of HCMS in May 2019; correct?</p> <p>23 A. That is what it said right on that</p> <p>24 thing we saw earlier; right?</p> <p>25 Q. Incumbency certificate.</p>	<p style="text-align: right;">Page 437</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall that HCMS borrowed</p> <p>4 \$400,000 from Highland in or around May 2019?</p> <p>5 A. Not specifically.</p> <p>6 Q. Do you have any reason to believe</p> <p>7 that it didn't?</p> <p>8 A. I have no knowledge -- I have no</p> <p>9 knowledge of what it was used for and whether</p> <p>10 it did or didn't.</p> <p>11 MR. MORRIS: Okay. Let's go to the</p> <p>12 next exhibit, please.</p> <p>13 Q. Do you see Frank Waterhouse signed</p> <p>14 here on behalf of the maker, HCMS Services?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Are you aware that HCMS</p> <p>17 borrowed \$150,000 from Highland in June 2019?</p> <p>18 A. No.</p> <p>19 Q. Okay. Do you have --</p> <p>20 A. I'm not aware and --</p> <p>21 Q. Do you have --</p> <p>22 A. I didn't -- I'm sorry, go ahead. I</p> <p>23 was just saying, looking at Frank's signature,</p> <p>24 you know, we're switching from me signing to</p> <p>25 Frank signing. And I guess we're saying Frank</p>
<p style="text-align: right;">Page 438</p> <p>1 DONDERO - 10/29/21</p> <p>2 is an authorized signatory, although if you</p> <p>3 look at Frank's, it looks like an automated</p> <p>4 signature versus, you know, an actual</p> <p>5 signature, but I assume you went over this with</p> <p>6 him, but I don't have specific knowledge of</p> <p>7 these at all.</p> <p>8 Q. And do you know that Mr. Waterhouse</p> <p>9 from time to time used an electronic signature?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I believe he did.</p> <p>13 Q. And you saw -- you have seen his</p> <p>14 electronic signature on other documents; is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. So it doesn't surprise you to see</p> <p>18 his electronic signature on a note; correct?</p> <p>19 A. Yeah. Yeah, okay. Yeah, I don't</p> <p>20 know. But whether or not he did it or somebody</p> <p>21 else did it or -- we're just getting a little</p> <p>22 far afoot from me signing it; right? That is</p> <p>23 all.</p> <p>24 Q. Right.</p> <p>25 A. To -- Frank -- Frank may have signed</p>	<p style="text-align: right;">Page 439</p> <p>1 DONDERO - 10/29/21</p> <p>2 it. He may have done it electronically or</p> <p>3 somebody may have done it electronically for</p> <p>4 him. Those are just different answers than me</p> <p>5 signing it; right?</p> <p>6 Q. Okay. And -- and that is fair.</p> <p>7 Are you aware that on December 3rd,</p> <p>8 2020, Highland made a demand upon HCMS for</p> <p>9 payment under these four notes that we have</p> <p>10 just looked at?</p> <p>11 A. I knew there was a demand on the</p> <p>12 NexPoint one. Can you refresh me on this one?</p> <p>13 Q. Sure.</p> <p>14 MR. MORRIS: Can we go to the next</p> <p>15 exhibit in Exhibit 3. Exhibit 5.</p> <p>16 Q. You will see that there is a letter</p> <p>17 dated December 3rd, 2020, from Mr. Seery to</p> <p>18 HCMS?</p> <p>19 A. Yep.</p> <p>20 Q. And do you see that it was sent to</p> <p>21 the attention of Mr. Waterhouse?</p> <p>22 Do you see that, sir?</p> <p>23 A. Yes, yep.</p> <p>24 Q. And, again, Mr. Waterhouse at that</p> <p>25 time was the treasurer of HCMS to the best of</p>

<p style="text-align: right;">Page 440</p> <p>1 DONDERO - 10/29/21</p> <p>2 your recollection; correct?</p> <p>3 A. He primarily was the CFO of</p> <p>4 Highland. But, yes, I mean, I do see that.</p> <p>5 Q. Okay. And did you learn on or</p> <p>6 around December 3rd that Highland had made</p> <p>7 demand upon HCMS for payment of all outstanding</p> <p>8 principal and interest due under the four</p> <p>9 demand notes that are listed on the page there?</p> <p>10 A. Yes, yep.</p> <p>11 Q. So you knew that at the time; right?</p> <p>12 A. Well, more importantly I knew they</p> <p>13 were all subject to the same forgiveness</p> <p>14 provisions as the other note.</p> <p>15 Q. Okay. So I move to strike.</p> <p>16 You knew in December 3rd, 2020, that</p> <p>17 Highland made demand; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And do you see that Highland</p> <p>20 gave HCMS an eight-day grace period or until</p> <p>21 December 11th, 2020, to make payment?</p> <p>22 A. Yes.</p> <p>23 Q. Under the demand note do you have</p> <p>24 any understanding that Highland was required to</p> <p>25 give any grace period at all?</p>	<p style="text-align: right;">Page 441</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I don't know.</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 Q. Do you know whether HCMS ever</p> <p>6 responded to this demand letter prior to the</p> <p>7 commencement of litigation?</p> <p>8 A. I don't know.</p> <p>9 Q. Prior to the commencement of</p> <p>10 litigation, did you discuss with anyone whether</p> <p>11 HCMS should respond to Highland's demand</p> <p>12 letter?</p> <p>13 A. Did I discuss with anyone? No, I</p> <p>14 don't remember -- I don't remember talking</p> <p>15 about this with Frank at all where --</p> <p>16 MS. DEITSCH-PEREZ: And I'm just</p> <p>17 going to stop you to make sure you don't</p> <p>18 blurt out any privileged communications, if</p> <p>19 there are any.</p> <p>20 We object to the disclosure. But</p> <p>21 with that caveat, go ahead.</p> <p>22 A. I'm sorry, repeat the question</p> <p>23 again. Let me try and keep it simple here.</p> <p>24 Q. Sure. It may be my fault.</p> <p>25 Mr. Dondero, you testified that you</p>
<p style="text-align: right;">Page 442</p> <p>1 DONDERO - 10/29/21</p> <p>2 were aware that Highland made a demand for</p> <p>3 payment on these four notes; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Did you have any</p> <p>6 non-privileged communications at any time after</p> <p>7 Highland sent this letter about whether and how</p> <p>8 HCMS should respond?</p> <p>9 A. You know, let me just -- let me</p> <p>10 adjust the prior answer for a second.</p> <p>11 I'm aware that this letter was sent.</p> <p>12 I'm not sure I knew contemporaneously or when I</p> <p>13 knew the letter was sent. I can't -- I have no</p> <p>14 recollection of receiving it at the time.</p> <p>15 And to answer your question, I can't</p> <p>16 recollect talking to Frank or anybody else</p> <p>17 about it at the time. I'm not sure I knew</p> <p>18 about it at the time. But I have -- I don't</p> <p>19 have any recollection of discussing it with</p> <p>20 anybody at or around the time.</p> <p>21 Q. Did you ever instruct anybody at any</p> <p>22 time to respond to this letter, whenever it is</p> <p>23 you learned about it?</p> <p>24 A. No.</p> <p>25 Q. Do you know if anyone acting on</p>	<p style="text-align: right;">Page 443</p> <p>1 DONDERO - 10/29/21</p> <p>2 behalf of HCMS ever informed Highland of HCMS'</p> <p>3 defenses to the -- to the demand letter prior</p> <p>4 to the commencement of litigation?</p> <p>5 A. Yeah, Frank would be the person to</p> <p>6 ask there. I don't know.</p> <p>7 Q. I'm just asking you. Prior to the</p> <p>8 commencement of litigation, did you ever</p> <p>9 instruct anyone to inform Highland that the</p> <p>10 HCMS notes were subject to oral agreements with</p> <p>11 the Dugaboy trustee?</p> <p>12 A. I believe former Judge Lynn sent a</p> <p>13 letter in that regard. But other than that, I</p> <p>14 don't remember talking to anybody -- I don't</p> <p>15 remember talking to the debtor about it per se.</p> <p>16 Q. It is your recollection that</p> <p>17 Judge Lynn sent a letter to Highland before the</p> <p>18 commencement of litigation, putting Highland on</p> <p>19 notice that the HCMS notes were the subject of</p> <p>20 oral agreements between you and the Dugaboy</p> <p>21 trust.</p> <p>22 Do I have that right?</p> <p>23 A. Yeah, that they were part of</p> <p>24 forgiveness or compensation or something. He</p> <p>25 sent a letter in that regard.</p>

<p style="text-align: right;">Page 444</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And was this part of a settlement</p> <p>3 discussion or was this in response to this</p> <p>4 demand letter?</p> <p>5 A. I don't know.</p> <p>6 Q. Have you produced that letter in</p> <p>7 discovery?</p> <p>8 MS. DEITSCH-PEREZ: I'm aware that</p> <p>9 you have the letter. I don't know if it</p> <p>10 was attached to something, but I know you</p> <p>11 have it.</p> <p>12 MR. MORRIS: Because you produced it</p> <p>13 in discovery or because Mr. Dondero is</p> <p>14 testifying that his recollection was that</p> <p>15 Mr. Dondero sent this letter to the debtor?</p> <p>16 MS. DEITSCH-PEREZ: The -- the</p> <p>17 letter has either been produced or was</p> <p>18 attached to something or was used in a</p> <p>19 deposition, but I am aware that you have</p> <p>20 it. If you need it to be Bates stamped, we</p> <p>21 could do that.</p> <p>22 MR. MORRIS: I definitely need it to</p> <p>23 be Bates stamped, I do, because I'm not</p> <p>24 aware of this particular letter. But I</p> <p>25 appreciate that.</p>	<p style="text-align: right;">Page 445</p> <p>1 DONDERO - 10/29/21</p> <p>2 MR. RUKAVINA: This is Davor.</p> <p>3 Couple things, John -- and I apologize for</p> <p>4 interjecting. I have not made an</p> <p>5 appearance yet today. Deborah has been</p> <p>6 objecting for everyone.</p> <p>7 Thomas Berghman will take over</p> <p>8 around 3:00 o'clock. Is that okay with</p> <p>9 you, John?</p> <p>10 He is probably just going to sit</p> <p>11 here and not object.</p> <p>12 MR. MORRIS: I will miss you and I</p> <p>13 hope you have safe travels.</p> <p>14 MR. RUKAVINA: Okay. Thank you very</p> <p>15 much.</p> <p>16 And, second, I think that the letter</p> <p>17 that is being referred to is the email</p> <p>18 letter, so I have produced it to you.</p> <p>19 With that, thank you everyone.</p> <p>20 MR. MORRIS: Okay. Take care.</p> <p>21 Q. Did anyone -- did you ever instruct</p> <p>22 anyone in December 2020 to make the payments</p> <p>23 that Highland demanded under the HCMS notes?</p> <p>24 MS. DEITSCH-PEREZ: The demand notes</p> <p>25 that are listed here on the Exhibit 5?</p>
<p style="text-align: right;">Page 446</p> <p>1 DONDERO - 10/29/21</p> <p>2 MR. MORRIS: Yes.</p> <p>3 A. Yes, not that I recall.</p> <p>4 Q. Did you ever instruct anyone in</p> <p>5 December 2020 not to make the payments that</p> <p>6 Highland demanded that are listed in this</p> <p>7 exhibit?</p> <p>8 A. No.</p> <p>9 Q. Do you know why HCMS did not make</p> <p>10 the payments that Highland demanded under the</p> <p>11 notes?</p> <p>12 A. Again, beyond compensation</p> <p>13 forgiveness argument, no.</p> <p>14 MR. MORRIS: Okay. Let's go to the</p> <p>15 next exhibit, 6.</p> <p>16 (Exhibit 6 marked.)</p> <p>17 Q. And this is another one of the term</p> <p>18 notes; right?</p> <p>19 A. Yes.</p> <p>20 MR. MORRIS: And can we just go to</p> <p>21 the signature line, please.</p> <p>22 Q. Is that your signature, sir?</p> <p>23 A. That looks more like it.</p> <p>24 Q. And do you -- are you willing to</p> <p>25 agree that you signed this promissory note in</p>	<p style="text-align: right;">Page 447</p> <p>1 DONDERO - 10/29/21</p> <p>2 favor of Highland on May 31st, 2017?</p> <p>3 A. Yes.</p> <p>4 Q. And is it fair to say you didn't</p> <p>5 read this note before you signed it?</p> <p>6 A. Correct. No reason to, really.</p> <p>7 Q. Okay. So it is fair to say that</p> <p>8 there is not a provision of this note that you</p> <p>9 didn't understand before you signed it;</p> <p>10 correct?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. That I didn't review it, so</p> <p>14 therefore I didn't have a opinion one way or</p> <p>15 the other.</p> <p>16 Q. Okay. This note substituted and</p> <p>17 superseded for the promissory notes that are</p> <p>18 set forth on Exhibit A to this document;</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. So just like NexPoint and HCMS, HCRE</p> <p>22 also consolidated their outstanding demand</p> <p>23 notes into one term notes at the end of</p> <p>24 May 2017; right?</p> <p>25 A. Yep.</p>



<p style="text-align: right;">Page 448</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. Let's go to HCRC, if we can</p> <p>3 take this down and put up Exhibit 4.</p> <p>4 Actually, before we go to that, do</p> <p>5 you have any recollection as to why HCRC</p> <p>6 borrowed money from Highland in the amounts</p> <p>7 equal to the prior notes as set forth to the</p> <p>8 exhibit to the term note?</p> <p>9 A. Nope.</p> <p>10 Q. Do you have any recollection at all</p> <p>11 as to what HCRC did with the proceeds of the</p> <p>12 loans that it obtained from Highland?</p> <p>13 A. No.</p> <p>14 Q. This is Exhibit 4, so this is the</p> <p>15 complaint -- this is actually the complaint</p> <p>16 against HCRC.</p> <p>17 MR. MORRIS: Can we go to Exhibit 6,</p> <p>18 please.</p> <p>19 MS. DEITSCH-PEREZ: Exhibit 6 of</p> <p>20 Exhibit 4?</p> <p>21 MR. MORRIS: No, I apologize. That</p> <p>22 was my mistake. Yes, Exhibit 6 to Exhibit</p> <p>23 4.</p> <p>24 MS. DEITSCH-PEREZ: Okay. If you</p> <p>25 want the hard copy, it is in a booklet.</p>	<p style="text-align: right;">Page 449</p> <p>1 DONDERO - 10/29/21</p> <p>2 Otherwise, she is pulling it up.</p> <p>3 Q. So this is the last of the three</p> <p>4 term notes. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Also signed on May 31st, 2017;</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And if we could look at the</p> <p>10 signature line, is that your signature, sir?</p> <p>11 A. Yes.</p> <p>12 Q. And did you sign this note on behalf</p> <p>13 of HCRC on or about May 31st, 2017?</p> <p>14 A. Yes.</p> <p>15 Q. Did you read this note before you</p> <p>16 signed it?</p> <p>17 A. No.</p> <p>18 Q. And since you didn't read it, is it</p> <p>19 fair to say that there wasn't a provision of</p> <p>20 this agreement that you didn't understand at</p> <p>21 the time that you signed it?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. There is -- there wasn't a</p> <p>25 provisions I did or didn't understand because I</p>
<p style="text-align: right;">Page 450</p> <p>1 DONDERO - 10/29/21</p> <p>2 didn't review it.</p> <p>3 Q. Okay. This note substituted and</p> <p>4 superseded for the promissory notes that are</p> <p>5 listed on Exhibit A on the right side of the</p> <p>6 page; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And Exhibit A set forth the</p> <p>9 outstanding principal and interest that HCRC</p> <p>10 owed to Highland under the prior notes as of</p> <p>11 May 31st, 2017; correct?</p> <p>12 A. Uh-huh.</p> <p>13 Q. That is a yes, sir; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you know why HCRC borrowed</p> <p>16 the money from Highland at the times and -- and</p> <p>17 in the amounts set forth on Exhibit A to the</p> <p>18 promissory note?</p> <p>19 A. No.</p> <p>20 Q. Do you have any recollection as to</p> <p>21 what HCRC did with the proceeds of the loans</p> <p>22 that they had obtained from Highland between</p> <p>23 January 2014 and April 2015?</p> <p>24 A. No.</p> <p>25 Q. Can we call the three term notes</p>	<p style="text-align: right;">Page 451</p> <p>1 DONDERO - 10/29/21</p> <p>2 that were signed by NexPoint, HCRC, and HCMS on</p> <p>3 May 31st, 2017 collectively as the term notes?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. You had the authority to sign</p> <p>6 each of the term notes on behalf of each of the</p> <p>7 respective makers; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Each of the term notes was for a</p> <p>10 30-year term; correct?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. Who decided to give each note</p> <p>13 a 30-year term, if you know?</p> <p>14 A. The auditors, the accountants, not</p> <p>15 me.</p> <p>16 Q. But you knew that each of the notes</p> <p>17 was for a 30-year term; is that fair?</p> <p>18 A. Yes, I guess, yes.</p> <p>19 Q. Notes were unsecured; right?</p> <p>20 A. Yes.</p> <p>21 Q. And the notes were not the product</p> <p>22 of any negotiations; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Is it fair to say that none of the</p> <p>25 makers of the term notes ever sought financing</p>



<p style="text-align: right;">Page 452</p> <p>1 DONDERO - 10/29/21</p> <p>2 from a third party as an alternative to the</p> <p>3 Highland notes?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. You don't have any reason to</p> <p>6 believe that an unrelated third party would</p> <p>7 have loaned money to NexPoint, HCRE, and HCMS</p> <p>8 on the terms set forth in each of the term</p> <p>9 notes, do you?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I -- it is not fair to draw that</p> <p>13 conclusion. You know, particularly NexPoint</p> <p>14 has borrowed a lot of money at much lower rates</p> <p>15 at or around 2017 and later, and to this day.</p> <p>16 Q. So then why --</p> <p>17 A. The same thing with HCRE.</p> <p>18 Q. So then why would HCRE and NexPoint</p> <p>19 enter into these loans rather than obtaining</p> <p>20 loans at lower interest rates if they were</p> <p>21 available?</p> <p>22 A. These are soft loans, again, so</p> <p>23 they're -- especially affiliate soft loans to</p> <p>24 other creditors are viewed almost as equity or</p> <p>25 subordinated to senior secured mortgages or</p>	<p style="text-align: right;">Page 453</p> <p>1 DONDERO - 10/29/21</p> <p>2 other financings that NexPoint and HCRE did.</p> <p>3 So I would say that is -- that is the reason.</p> <p>4 Q. Are you saying that Highland today</p> <p>5 really has equity interests in NexPoint, HCRE,</p> <p>6 and HCMS?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. Yeah, no, I didn't say that. I'm</p> <p>10 saying it has subordinated debt interest, but</p> <p>11 they are soft notes, so they're viewed as</p> <p>12 deeply subordinated equity-ish, so to speak, as</p> <p>13 far as the senior secured debtholders are</p> <p>14 concerned.</p> <p>15 Q. Well, that would be true of any</p> <p>16 senior secured debt relative to unsecured debt;</p> <p>17 isn't that right?</p> <p>18 A. Yes, but again, these are</p> <p>19 particularly soft notes, you know.</p> <p>20 Q. Okay. At the time you signed these</p> <p>21 notes, were you aware that each of the term</p> <p>22 notes required payment of an annual installment</p> <p>23 on December 31st of each year?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p style="text-align: right;">Page 454</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I knew there was more required</p> <p>3 periodic payments than historically, and that</p> <p>4 was part of -- partly driven by the -- the</p> <p>5 auditors, I believe.</p> <p>6 THE WITNESS: You know what, can</p> <p>7 we -- can we take a break for like five or</p> <p>8 10 minutes, and then, you know, at most --</p> <p>9 at most I've got another hour in me today,</p> <p>10 and then so we could just work on when it</p> <p>11 fits on everybody else's calendar if we</p> <p>12 can't wrap up in an hour, okay?</p> <p>13 MR. MORRIS: No problem,</p> <p>14 Mr. Dondero. So the time now is what --</p> <p>15 what time do we have?</p> <p>16 VIDEOGRAPHER: Off the record, 2:56.</p> <p>17 (Recess taken 2:56 p.m. to 3:19 p.m.)</p> <p>18 VIDEOGRAPHER: Back on the record,</p> <p>19 3:19.</p> <p>20 Q. Are you ready to proceed, sir?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did you speak with anybody</p> <p>23 during the break about the substance of this</p> <p>24 deposition?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 455</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So we were just looking at the third</p> <p>3 in the series of term notes, and if we can go</p> <p>4 to the -- I apologize, the first page of this</p> <p>5 one, just to refresh your recollection after</p> <p>6 the break that this is the term note that was</p> <p>7 executed by you on behalf of HCRE Partners on</p> <p>8 May 31st, 2017.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And I looked at Paragraph 5</p> <p>12 before, but I just want to make sure, you're</p> <p>13 telling me that you didn't read this before you</p> <p>14 signed it, do I have that right, Paragraph 5?</p> <p>15 A. Yes.</p> <p>16 Q. And so you are unaware -- when did</p> <p>17 you first -- when did you first become aware of</p> <p>18 the provision that is set forth in Paragraph 5?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I don't know.</p> <p>22 Q. Okay. Was it before or after the</p> <p>23 commencement of the litigation?</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. NexPoint didn't make the</p>

<p style="text-align: right;">Page 456</p> <p>1 DONDERO - 10/29/21</p> <p>2 installment payment that was due at the end of</p> <p>3 2020; correct?</p> <p>4 MS. DEITSCH-PEREZ: Object to -- are</p> <p>5 you still talking -- have you left HCRC?</p> <p>6 MR. MORRIS: No. I said what I</p> <p>7 meant to. So we can take down the exhibit</p> <p>8 if that's the part that is confusing you.</p> <p>9 I appreciate that.</p> <p>10 MS. DEITSCH-PEREZ: Okay.</p> <p>11 Q. Okay. NexPoint didn't make the</p> <p>12 installment payment that was due at the end of</p> <p>13 2020; correct?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. Yeah. I mean, I think maybe the</p> <p>17 right way to describe it is Highland or --</p> <p>18 yeah, Highland or Frank Waterhouse on behalf of</p> <p>19 NexPoint didn't make the payment.</p> <p>20 Q. Okay. And HCRC didn't make the</p> <p>21 installment payment that was due at the end of</p> <p>22 2020; correct?</p> <p>23 A. I don't -- I guess -- okay, if they</p> <p>24 missed it too, I -- I did not have specific</p> <p>25 awareness to that, I guess, but if you are</p>	<p style="text-align: right;">Page 457</p> <p>1 DONDERO - 10/29/21</p> <p>2 suing under it, I guess they did.</p> <p>3 Q. Right. And HCMS didn't make the</p> <p>4 payment that was due at the end of the year, to</p> <p>5 the best of your knowledge; correct?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. Yeah. I mean, what I'd just</p> <p>9 separate in my notes here is the HCMFA was just</p> <p>10 not -- it wasn't a bona fide note, I guess,</p> <p>11 is -- that is -- which I guess is a</p> <p>12 different -- a different conversation.</p> <p>13 Q. Yeah. Do you understand that the</p> <p>14 question was about HCMS? Let me restate the</p> <p>15 question.</p> <p>16 MS. DEITSCH-PEREZ: Yes.</p> <p>17 Q. HCMS --</p> <p>18 A. Oh, I'm sorry.</p> <p>19 MS. DEITSCH-PEREZ: John, I'm sorry,</p> <p>20 it is really hard on the video to</p> <p>21 distinguish between HCMF and HCMS, so if</p> <p>22 you could just --</p> <p>23 A. How about just say Services for</p> <p>24 Highland Capital Management Services, just</p> <p>25 say -- instead of S, just say Services.</p>
<p style="text-align: right;">Page 458</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Sure. All right. So from now on, I</p> <p>3 will try and use the word "Services" and you</p> <p>4 will know that that means Highland Management</p> <p>5 Services, Inc.; is that fair?</p> <p>6 A. Yes, okay.</p> <p>7 Q. Okay. So Services didn't make the</p> <p>8 installment payment that was due at year-end;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And I just want to make sure</p> <p>12 that I have this right. Is it -- is it the</p> <p>13 corporate obligors' -- those three corporate</p> <p>14 obligors' contention that one of the reasons</p> <p>15 they didn't make the payments at the end of the</p> <p>16 year is that they were relying on Highland to</p> <p>17 make the payment for them?</p> <p>18 A. Absolutely.</p> <p>19 Q. Okay.</p> <p>20 A. It was due course de minimis, and</p> <p>21 those entities didn't have a single employee or</p> <p>22 capable financial person other than the people</p> <p>23 at Highland that were doing the shared services</p> <p>24 for them.</p> <p>25 Q. NexPoint didn't have any employees</p>	<p style="text-align: right;">Page 459</p> <p>1 DONDERO - 10/29/21</p> <p>2 in December 2020. Is that your testimony?</p> <p>3 A. I was thinking about HCRC and</p> <p>4 Services had zero employees. NexPoint had</p> <p>5 employees but none that were involved in basic</p> <p>6 accounting functions.</p> <p>7 Q. Okay. And -- and there are people,</p> <p>8 including yourself, who were officers or</p> <p>9 employees of NexPoint in December 2020;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And HCRC had officers in December</p> <p>13 2020, including you; correct?</p> <p>14 A. Yes. Officers, yes.</p> <p>15 Q. And Services had officers in</p> <p>16 December 2020, including you; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I think in summary form, to</p> <p>19 be fair, I think we have identified one of the</p> <p>20 defenses for these three corporate obligors.</p> <p>21 Two of them have the defense of</p> <p>22 prepayment; right?</p> <p>23 A. Yes.</p> <p>24 Q. And one of them is NexPoint,</p> <p>25 NexPoint has the defense of prepayment.</p>

<p style="text-align: right;">Page 460</p> <p>1 DONDERO - 10/29/21</p> <p>2 Do you have that -- do I have that</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. Which of the other two, remind me?</p> <p>6 A. Services.</p> <p>7 Q. Okay. So NexPoint and Services have</p> <p>8 the defense of prepayment. Are there any other</p> <p>9 reasons that you know of that these three</p> <p>10 corporate obligors didn't make the annual</p> <p>11 installment payment that was due at the end of</p> <p>12 the year?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Again, they -- they should have been</p> <p>16 in regular course. Those payments -- using the</p> <p>17 word "payment" is almost like an overstatement</p> <p>18 of the significance or the amount. If the</p> <p>19 amounts were small in all cases, they should</p> <p>20 have been made or they should have been paid,</p> <p>21 even in the context of contention and even in</p> <p>22 the context of the larger amounts of money that</p> <p>23 Highland owed us.</p> <p>24 Q. I'm just -- I'm just asking a pretty</p> <p>25 simple question, sir. I don't mean to be</p>	<p style="text-align: right;">Page 461</p> <p>1 DONDERO - 10/29/21</p> <p>2 contentious with you. We have identified one</p> <p>3 defense that these corporate obligors contends</p> <p>4 exists; and that is, Highland was supposed to</p> <p>5 make the payment. Fair?</p> <p>6 A. Yes.</p> <p>7 Q. And then we have identified a second</p> <p>8 defense for NexPoint and HCMS, and that is</p> <p>9 their defense that they prepaid.</p> <p>10 Do I have that generally right?</p> <p>11 A. Yes.</p> <p>12 Q. Can you describe for me any other</p> <p>13 defenses that these three corporate obligors</p> <p>14 have for not making the payment that was due at</p> <p>15 the end of the year?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. I'm thinking. Not at the moment.</p> <p>19 Q. Okay. Did you instruct anyone in</p> <p>20 December of 2020 to make the installment</p> <p>21 payments that were due on December 31st under</p> <p>22 these three term notes?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form, asked and answered.</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 462</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. Did you take any steps to</p> <p>3 confirm that Highland would make the payments</p> <p>4 that were due under these three term notes at</p> <p>5 the end of the year?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. No. I testified already the first I</p> <p>9 heard about it was a week or two later. And I</p> <p>10 called up Frank and confirmed with him to make</p> <p>11 sure they got paid and make sure they were back</p> <p>12 in compliance.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: I move to strike</p> <p>15 everything after the word "no."</p> <p>16 Q. Do you know whether anybody on</p> <p>17 behalf of any of the three corporate obligors</p> <p>18 under the term notes ever directed Highland to</p> <p>19 make the payments under them at the end of the</p> <p>20 year?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. Not before the end of the year, no.</p> <p>24 Q. Okay. And do you know whether</p> <p>25 anybody acting on behalf of any of the three</p>	<p style="text-align: right;">Page 463</p> <p>1 DONDERO - 10/29/21</p> <p>2 corporate obligors under the term notes ever</p> <p>3 took any steps in December 2020 to make sure</p> <p>4 that Highland would, in fact, make the payments</p> <p>5 that were due at year-end?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. No, there was a reliance on</p> <p>9 Highland.</p> <p>10 Q. Okay. Is it your testimony that</p> <p>11 Highland was authorized to make the payments</p> <p>12 under the notes at year-end without being</p> <p>13 directed by a representative of the three</p> <p>14 corporate obligors?</p> <p>15 A. Yes. It is my contention that that</p> <p>16 is how it worked in prior years also.</p> <p>17 Q. And so you believe that nobody on</p> <p>18 behalf of any of the corporate obligors ever</p> <p>19 authorized or directed Highland to make the</p> <p>20 payments but that Highland did it without --</p> <p>21 without direction?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. Yes, typically. And in 2017 or</p> <p>25 2018, 2019, for sure.</p>

<p style="text-align: right;">Page 464</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. We have looked at one -- at</p> <p>3 one December 3rd letter. I mean, do you</p> <p>4 remember that you also received a number of</p> <p>5 letters on December 3rd demanding payment on</p> <p>6 certain promissory notes?</p> <p>7 A. No.</p> <p>8 Q. All right.</p> <p>9 MR. MORRIS: Can we call up</p> <p>10 Exhibit 2, please. No, I apologize. Not</p> <p>11 Exhibit 2, Exhibit 4.</p> <p>12 (Exhibit 4 marked.)</p> <p>13 MS. DEITSCH-PEREZ: Exhibit 4 in the</p> <p>14 notebook?</p> <p>15 MR. MORRIS: Yes, ma'am.</p> <p>16 Okay. And now let's -- let's go to</p> <p>17 the exhibits. Exhibit 2, Exhibit 3,</p> <p>18 Exhibit 4, Exhibit 5.</p> <p>19 Q. Do you see, sir, that this is a</p> <p>20 letter addressed to you on behalf of HCRE</p> <p>21 Partners that is also dated December 3rd, 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Does that refresh your recollection</p> <p>24 that you also received notices, demand notices</p> <p>25 on or around December 3rd, 2020, with respect</p>	<p style="text-align: right;">Page 465</p> <p>1 DONDERO - 10/29/21</p> <p>2 to notes that were held by Highland?</p> <p>3 A. No.</p> <p>4 Q. Do you recall this letter at all?</p> <p>5 A. No, if I -- if I had, I would have</p> <p>6 made the forgiveness argument or I would have</p> <p>7 told someone to make the forgiveness argument,</p> <p>8 but I don't remember this at all.</p> <p>9 Q. Okay. Is it fair to say that</p> <p>10 neither you nor anyone acting on behalf of</p> <p>11 yourself, HCMF, or HCRE ever responded to any</p> <p>12 of the demand letters at the beginning of</p> <p>13 December 2020?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. Yes, I don't -- I don't know.</p> <p>17 Q. You don't have any knowledge of</p> <p>18 that; is that fair?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I don't know.</p> <p>22 Q. And you don't have any knowledge of</p> <p>23 anybody responding to any demand letter that</p> <p>24 was sent to HCMF; correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 466</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. HCMF or Services?</p> <p>4 Q. HCMF?</p> <p>5 A. I -- I don't know. I don't have any</p> <p>6 knowledge.</p> <p>7 MR. MORRIS: Can we put up</p> <p>8 Exhibit 1, please.</p> <p>9 (Exhibit 1 marked.)</p> <p>10 MR. MORRIS: We probably want to go</p> <p>11 to Exhibit 3 of that document.</p> <p>12 Q. This one was sent to Mr. Waterhouse.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And did you become aware on</p> <p>16 or around December 3rd, 2020, that Highland</p> <p>17 made demand under the two notes listed in this</p> <p>18 letter?</p> <p>19 A. Yes. Why would this one go to</p> <p>20 Frank Waterhouse?</p> <p>21 Q. Was he the treasurer -- was he the</p> <p>22 treasurer of Highland Capital Management Fund</p> <p>23 Advisors at the time?</p> <p>24 A. Right.</p> <p>25 Q. So does it make sense that the payee</p>	<p style="text-align: right;">Page 467</p> <p>1 DONDERO - 10/29/21</p> <p>2 on a note might send a demand letter to the</p> <p>3 treasurer of the maker of the note?</p> <p>4 MS. DEITSCH-PEREZ: Object to form.</p> <p>5 A. I'm just saying they could have sent</p> <p>6 the NexPoint letter or the Services letter to</p> <p>7 him also; right?</p> <p>8 Q. I don't -- I think the NexPoint is</p> <p>9 only a term note; right? So there is no demand</p> <p>10 letter.</p> <p>11 A. No, I know that. But whatever --</p> <p>12 whatever the other one we were just looking at,</p> <p>13 the Services one could have gone to him, too.</p> <p>14 Anyway, whatever. It doesn't</p> <p>15 matter. But, no, I don't have a specific</p> <p>16 recollection of this, if that was your</p> <p>17 question.</p> <p>18 Q. You don't have -- you don't have any</p> <p>19 recollection of Highland making demand under</p> <p>20 promissory notes that were issued by you and</p> <p>21 certain of your affiliates in early December</p> <p>22 2020. You don't remember that at all?</p> <p>23 A. There was a lot going on then. And,</p> <p>24 again, it wasn't something that we either</p> <p>25 thought was legitimate based on forgiveness or</p>

<p style="text-align: right;">Page 468</p> <p>1 DONDERO - 10/29/21</p> <p>2 other issues or it wasn't things that we</p> <p>3 thought were legitimate as part of the overall</p> <p>4 settlement.</p> <p>5 You've got to remember we didn't</p> <p>6 realize Seery betrayed the estate at this</p> <p>7 point. We thought we were moving towards, you</p> <p>8 know, resolution or a pot plan.</p> <p>9 Q. Okay.</p> <p>10 MR. MORRIS: I move to strike.</p> <p>11 Q. And please listen carefully to my</p> <p>12 question.</p> <p>13 Did you have any knowledge in early</p> <p>14 December 2020 that Highland made demand for</p> <p>15 payment under demand notes that were issued by</p> <p>16 you and certain of your affiliates?</p> <p>17 A. Same answer.</p> <p>18 Q. Were you aware or you were not</p> <p>19 aware?</p> <p>20 A. Well, no specific knowledge for the</p> <p>21 reasons articulated in the answer that you --</p> <p>22 you moved to strike.</p> <p>23 Q. Okay. So -- so you had -- you had</p> <p>24 no particularized knowledge of the demands in</p> <p>25 December 2020; correct?</p>	<p style="text-align: right;">Page 469</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Right.</p> <p>3 Q. Okay. And so it is fair to say that</p> <p>4 you never directed anybody to respond to these</p> <p>5 demands because you didn't have knowledge of</p> <p>6 them; correct?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Do you know whether anybody</p> <p>9 responded on behalf -- on your behalf or any of</p> <p>10 the corporate obligors' behalf to any of the</p> <p>11 demand letters that were -- that you now know</p> <p>12 were sent in early December 2020?</p> <p>13 A. Well, yes. I mean, I know</p> <p>14 eventually. I don't know when, but I don't</p> <p>15 think anybody believes these -- these HVIN</p> <p>16 notes are legitimate notes.</p> <p>17 I know the response was more around</p> <p>18 it being payments for the TerreStar regulatory</p> <p>19 obligations for all the things that Highland</p> <p>20 had mucked up in the TerreStar situation.</p> <p>21 Q. While you were president of that</p> <p>22 entity; right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And -- and</p> <p>25 PricewaterhouseCoopers certainly doesn't think</p>
<p style="text-align: right;">Page 470</p> <p>1 DONDERO - 10/29/21</p> <p>2 these are frivolous obligations, does it?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 A. PricewaterhouseCoopers doesn't --</p> <p>6 Q. PricewaterhouseCoopers specifically</p> <p>7 included a disclosure of all of these</p> <p>8 promissory notes in the audited financial</p> <p>9 statements; correct?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I mean, as they should have with the</p> <p>13 information they had at the time, but I think</p> <p>14 what has come out since then is that they -- it</p> <p>15 was moneys that moved from Highland to HFAM for</p> <p>16 things that were caused by Highland and people,</p> <p>17 not me, not even Frank, I think, but other</p> <p>18 people assumed it was a note and made notes out</p> <p>19 of it. And that is what PricewaterhouseCoopers</p> <p>20 put into the financials, but I think what</p> <p>21 everybody acknowledges is that they were</p> <p>22 never -- they were never notes.</p> <p>23 Q. Is there a document that you have</p> <p>24 ever seen in your life that supports what you</p> <p>25 just said?</p>	<p style="text-align: right;">Page 471</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. Yes.</p> <p>5 Q. Can you identify that document for</p> <p>6 me?</p> <p>7 A. Yeah. It is a -- it is a settlement</p> <p>8 with the SEC in terms of what they said the</p> <p>9 breaches were, and why they were finding HFAM,</p> <p>10 the rationale that they had in the regulatory</p> <p>11 breaches and in the settlement, and all of the</p> <p>12 breaches in the settlement were things that</p> <p>13 Highland did, not that HFAM did.</p> <p>14 It was all valuation, it was all --</p> <p>15 it was all services that HFAM had contracted</p> <p>16 with Highland that were performed deficiently</p> <p>17 in the eyes of the SEC.</p> <p>18 Q. Okay. We will -- we will get to</p> <p>19 that in more detail, but I just would like to</p> <p>20 know if you believe that any correspondence to</p> <p>21 the SEC specifically stated that Highland</p> <p>22 Capital Management, L.P. and not Highland</p> <p>23 Capital Management Fund Advisors, L.P. was</p> <p>24 responsible for the TerreStar valuation error.</p> <p>25 A. The SEC would not have parsed</p>



<p style="text-align: right;">Page 472</p> <p>1 DONDERO - 10/29/21</p> <p>2 between the different players in the entities.</p> <p>3 They would have said what they thought the</p> <p>4 breaches were overall in their letter, and what</p> <p>5 would govern the split is the shared services</p> <p>6 agreement and where were the employees that</p> <p>7 performed the activities that they cited.</p> <p>8 Q. Okay. We will get to that at a</p> <p>9 later time.</p> <p>10 All right. Let's go back to the</p> <p>11 oral agreements that you entered into with the</p> <p>12 Dugaboy trustee.</p> <p>13 MR. MORRIS: And let's start by</p> <p>14 putting back up Exhibit 31, Paragraph 82.</p> <p>15 MS. JEFFRIES: I'm sorry, can you</p> <p>16 repeat that?</p> <p>17 MR. MORRIS: Yes. Exhibit 31,</p> <p>18 Paragraph 82, yes.</p> <p>19 Q. And, again, Mr. Dondero, I think you</p> <p>20 have testified already that you believe</p> <p>21 Paragraph 82 generally describes the oral</p> <p>22 agreement that you entered into with the</p> <p>23 Dugaboy trustee with respect to the promissory</p> <p>24 notes that we've described; right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 473</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And -- and it is -- and that</p> <p>3 includes the promissory notes that you signed</p> <p>4 that Highland is suing on as well as the</p> <p>5 promissory notes that HCRE, HCMS, and NexPoint</p> <p>6 signed that Highland is suing on; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you contend that the oral</p> <p>9 agreements that you entered into with the</p> <p>10 Dugaboy trustee modified the parties' rights</p> <p>11 under the original promissory notes?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Modify, boy, sounds like a legal</p> <p>15 term. It said conditions by which they could</p> <p>16 be forgiven.</p> <p>17 Q. And there were no such conditions in</p> <p>18 the original notes; right?</p> <p>19 A. That is correct.</p> <p>20 Q. Okay. So I'm just asking you from</p> <p>21 your perspective whether the oral agreements</p> <p>22 that you entered into with the Dugaboy trustee</p> <p>23 were intended to modify the parties' rights and</p> <p>24 obligations under the original promissory</p> <p>25 notes.</p>
<p style="text-align: right;">Page 474</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. It was meant to condition the</p> <p>5 forgiveness.</p> <p>6 Q. Did it change --</p> <p>7 A. I would like to use those words</p> <p>8 versus modified the agreement.</p> <p>9 Q. Did it -- did it alter the parties'</p> <p>10 rights and obligations?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 Q. I'm not trying to play a game with</p> <p>14 you. I just --</p> <p>15 MS. DEITSCH-PEREZ: That is exactly</p> <p>16 what you are doing. Why don't you just ask</p> <p>17 him --</p> <p>18 MR. MORRIS: Please stop talking.</p> <p>19 Please stop talking.</p> <p>20 Q. Mr. Dondero, is it fair to say that</p> <p>21 the promissory notes that are the subject of</p> <p>22 your oral agreements with the Dugaboy --</p> <p>23 Dugaboy trustee set forth the parties' rights</p> <p>24 and obligations thereunder, both the maker and</p> <p>25 the payee?</p>	<p style="text-align: right;">Page 475</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: Can you read</p> <p>3 that back again.</p> <p>4 Q. Is it fair to say that the original</p> <p>5 promissory notes that are the subject of the</p> <p>6 oral agreements between you and the Dugaboy --</p> <p>7 withdrawn.</p> <p>8 Is it fair to say that the original</p> <p>9 promissory notes that Highland is suing under</p> <p>10 set forth the maker and the payees' rights and</p> <p>11 obligations under those notes?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. Object to the form.</p> <p>14 A. Yeah, I -- again, I want to -- I</p> <p>15 want to avoid using the term "modification" or</p> <p>16 implying modification because, again, the notes</p> <p>17 are soft, and they really just talk about a</p> <p>18 rate and/or payment or amortizations, but</p> <p>19 they're soft notes. Something in the agreement</p> <p>20 that lays out the conditions for forgiveness</p> <p>21 aren't necessarily a modification of the note,</p> <p>22 and I'd like that to be --</p> <p>23 Q. Let me --</p> <p>24 A. -- my testimony.</p> <p>25 Q. Let me ask it this way: Under each</p>



<p style="text-align: right;">Page 476</p> <p>1 DONDERO - 10/29/21</p> <p>2 of the demand notes, Highland as the payee had</p> <p>3 the unfettered right to demand payment at any</p> <p>4 time; correct? Did you understand that?</p> <p>5 MS. DEITSCH-PEREZ: At the time that</p> <p>6 the notes were first signed?</p> <p>7 MR. MORRIS: Yes, ma'am.</p> <p>8 A. Yeah. I mean, at the -- at the time</p> <p>9 that they were first put in place, but by the</p> <p>10 time the demand was made, they had already been</p> <p>11 subject to the conditions present or the</p> <p>12 conditions for forgiveness.</p> <p>13 Q. Okay. So this is exactly what I'm</p> <p>14 trying to get at. At the time the notes were</p> <p>15 signed, Highland had the right to make demand</p> <p>16 for payment at any time; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And when you entered into the oral</p> <p>19 agreements with the Dugaboy trustee, Highland's</p> <p>20 right to make a demand -- pick your word,</p> <p>21 modified, altered, amended, changed -- it</p> <p>22 was -- your oral agreement had an impact on</p> <p>23 Highland's rights under the promissory notes;</p> <p>24 correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to form</p>	<p style="text-align: right;">Page 477</p> <p>1 DONDERO - 10/29/21</p> <p>2 of the question.</p> <p>3 Q. You can answer.</p> <p>4 A. The conditions subsequent -- the</p> <p>5 condition precedent -- precedence for</p> <p>6 forgiveness changed the ability for the demand</p> <p>7 notes to be demanded.</p> <p>8 Q. Okay. And -- and each of the oral</p> <p>9 agreements that you entered into with the</p> <p>10 Dugaboy trustee was related to the loans that</p> <p>11 were reflected in the promissory notes;</p> <p>12 correct?</p> <p>13 A. Well, it was related to the</p> <p>14 promissory notes themselves.</p> <p>15 Q. Correct. And the promissory notes</p> <p>16 reflect notes that were made from the payee to</p> <p>17 the maker; correct?</p> <p>18 A. Yeah. Most of them were roll-ups</p> <p>19 from prior.</p> <p>20 Q. No. Those are the term notes. I'm</p> <p>21 only talking about the demand notes.</p> <p>22 A. Okay.</p> <p>23 Q. Okay. So with respect to the demand</p> <p>24 notes, the oral agreements that you entered</p> <p>25 into with the Dugaboy trustee related to the</p>
<p style="text-align: right;">Page 478</p> <p>1 DONDERO - 10/29/21</p> <p>2 loans that were the subject of the promissory</p> <p>3 notes; correct?</p> <p>4 A. Yeah, I -- I -- I am just not</p> <p>5 understanding the nuance enough to answer that</p> <p>6 question.</p> <p>7 Q. Did the oral agreements relate to</p> <p>8 the loans that were the subject of the</p> <p>9 promissory notes?</p> <p>10 A. The oral agreements affected the</p> <p>11 term loans and the demand notes.</p> <p>12 Q. Okay.</p> <p>13 A. Does that answer your question?</p> <p>14 Q. And so -- and so is it fair to say</p> <p>15 that the oral agreements related to -- to</p> <p>16 the -- to the -- to the loans that were the</p> <p>17 subject of the notes?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay.</p> <p>20 A. I'm not -- I'm not sure what you are</p> <p>21 asking, but I don't know the answer.</p> <p>22 Q. Okay. It is your --</p> <p>23 MS. DEITSCH-PEREZ: John, just</p> <p>24 how -- I just think the witness is lagging</p> <p>25 a little. So how much longer do you think</p>	<p style="text-align: right;">Page 479</p> <p>1 DONDERO - 10/29/21</p> <p>2 you have?</p> <p>3 MR. MORRIS: Oh, I've got probably</p> <p>4 four hours, so I don't expect to finish</p> <p>5 today. If Mr. Dondero -- if Mr. Dondero</p> <p>6 wants to stop --</p> <p>7 Q. Are you unable to continue right</p> <p>8 now, Mr. Dondero?</p> <p>9 A. Well, if we have four more hours, I</p> <p>10 would rather do it a day next -- next week, one</p> <p>11 afternoon.</p> <p>12 MR. MORRIS: Okay. Can we check our</p> <p>13 calendars before we go off the record?</p> <p>14 We have a deposition on Tuesday.</p> <p>15 I'm not available on Monday. I can make</p> <p>16 myself free on Wednesday, Thursday, or</p> <p>17 Friday. And I think that we should expect,</p> <p>18 you know, a substantial period of time,</p> <p>19 perhaps as long as a full day.</p> <p>20 I mean, with all due respect --</p> <p>21 MS. DEITSCH-PEREZ: How do you have</p> <p>22 a full day? You have already gone -- you</p> <p>23 have already gone more than half a day.</p> <p>24 MR. MORRIS: Yeah. And just -- just</p> <p>25 to be clear -- and I'm happy, you know,</p>

<p style="text-align: right;">Page 480</p> <p>1 DONDERO - 10/29/21</p> <p>2 to -- to discuss this with you offline, but</p> <p>3 I didn't decide that Mr. Dondero would</p> <p>4 appear in his personal capacity and on</p> <p>5 behalf of three separate 30(b)(6)</p> <p>6 witnesses.</p> <p>7 If you had given me a different</p> <p>8 witness for each, I would have a total of</p> <p>9 28 hours. I don't expect to use anything</p> <p>10 remotely close to that time, but I am</p> <p>11 examining four witnesses here and I</p> <p>12 would -- I would appreciate --</p> <p>13 MS. DEITSCH-PEREZ: But we also --</p> <p>14 MR. MORRIS: I would appreciate it.</p> <p>15 And, look, you can stop me at any time. If</p> <p>16 I haven't finished asking the questions</p> <p>17 that I believe I'm entitled to, I will, you</p> <p>18 know, take it to the judge. I'm just</p> <p>19 putting you on notice. I have -- I'm on</p> <p>20 page 27 of a 57-page outline, so...</p> <p>21 MS. DEITSCH-PEREZ: Oh, geez.</p> <p>22 MR. MORRIS: Yeah, so I do have a</p> <p>23 fair amount more to cover. Okay?</p> <p>24 MS. DEITSCH-PEREZ: All right.</p> <p>25 MR. MORRIS: So Wednesday, Thursday,</p>	<p style="text-align: right;">Page 481</p> <p>1 DONDERO - 10/29/21</p> <p>2 or Friday, Mr. Dondero, I will make myself</p> <p>3 available at your convenience.</p> <p>4 THE WITNESS: I have all day board</p> <p>5 meetings on Wednesday.</p> <p>6 MR. MORRIS: Okay.</p> <p>7 THE WITNESS: I could do Thursday</p> <p>8 afternoon or I can do Friday afternoon.</p> <p>9 Hold on.</p> <p>10 MS. DEITSCH-PEREZ: Let me put this</p> <p>11 on mute and we will look at our calendars.</p> <p>12 MR. MORRIS: Thank you.</p> <p>13 VIDEOGRAPHER: Do you want to stay</p> <p>14 on the record?</p> <p>15 MR. MORRIS: Yes, please.</p> <p>16 THE WITNESS: Hello. All right. I</p> <p>17 can do Thursday afternoon for four hours.</p> <p>18 And if we need more time than that we can</p> <p>19 either do Friday afternoon or sometime</p> <p>20 the -- the week after that, but I have -- I</p> <p>21 have got --</p> <p>22 MR. MORRIS: Thank you very much.</p> <p>23 What time on Thursday works for you,</p> <p>24 sir?</p> <p>25 THE WITNESS: How about 1:00 o'clock</p>
<p style="text-align: right;">Page 482</p> <p>1 DONDERO - 10/29/21</p> <p>2 my time?</p> <p>3 MR. MORRIS: Okay. I appreciate it.</p> <p>4 Thank you very much. 1:00 o'clock Central,</p> <p>5 it is, next Thursday for the continuation</p> <p>6 of this.</p> <p>7 And hopefully I will finish that</p> <p>8 day, you know, if we can go without a lot</p> <p>9 of breaks and the rest of it. Hopefully I</p> <p>10 can finish that day. My intention is to do</p> <p>11 that. Okay?</p> <p>12 THE WITNESS: Perfect. Thank you.</p> <p>13 MS. DEITSCH-PEREZ: Can -- can I get</p> <p>14 the rough?</p> <p>15 COURT REPORTER: Yes. Yes.</p> <p>16 MR. MORRIS: All right. We can go</p> <p>17 off the record.</p> <p>18 MS. DEITSCH-PEREZ: Thank you.</p> <p>19 COURT REPORTER: Thank you.</p> <p>20 VIDEOGRAPHER: Off the record, 3:53.</p> <p>21 (Deposition adjourned at 3:53 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 483</p> <p>1 DONDERO - 10/29/21</p> <p>2 _____</p> <p>3 JAMES DONDERO</p> <p>4</p> <p>5 Subscribed and sworn to before me</p> <p>6 this day of 2021.</p> <p>7 _____</p> <p>8 _____</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 484</p> <p>1 DONDERO - 10/29/21</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 I, SUSAN S. KLINGER, a certified shorthand</p> <p>5 reporter within and for the State of Texas, do</p> <p>6 hereby certify:</p> <p>7 That JAMES DONDERO, the witness whose</p> <p>8 deposition is hereinbefore set forth, was duly</p> <p>9 sworn by me and that such deposition is a true</p> <p>10 record of the testimony given by such witness.</p> <p>11 I further certify that I am not related to</p> <p>12 any of the parties to this action by blood or</p> <p>13 marriage; and that I am in no way interested in</p> <p>14 the outcome of this matter.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my</p> <p>16 hand this 29th of October, 2021.</p> <p>17</p> <p>18 _____</p> <p>19 Susan S. Klinger, RMR-CRR, CSR</p> <p>20 Texas CSR# 6531</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 485</p> <p>1 DONDERO - 10/29/21</p> <p>2 NAME OF CASE: In re: Highland Capital</p> <p>3 DATE OF DEPOSITION: October 29, 2021</p> <p>4 NAME OF WITNESS: James Dondero</p> <p>5 Reason Codes:</p> <p>6 1. To clarify the record.</p> <p>7 2. To conform to the facts.</p> <p>8 3. To correct transcription errors.</p> <p>9 Page____Line____Reason_____</p> <p>10 From_____to_____</p> <p>11 Page____Line____Reason_____</p> <p>12 From_____to_____</p> <p>13 Page____Line____Reason_____</p> <p>14 From_____to_____</p> <p>15 Page____Line____Reason_____</p> <p>16 From_____to_____</p> <p>17 Page____Line____Reason_____</p> <p>18 From_____to_____</p> <p>19 Page____Line____Reason_____</p> <p>20 From_____to_____</p> <p>21 Page____Line____Reason_____</p> <p>22 From_____to_____</p> <p>23 Page____Line____Reason_____</p> <p>24 From_____to_____</p> <p>25</p>

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